99TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
99-712

AMENDING THE ALASKA NATIVE CLAIMS SETTLEMENT ACT TO PROVIDE ALASKA NATIVES WITH CERTAIN OPTIONS FOR THE CONTINUED OWNERSHIP OF LANDS AND CORPORATE SHARES RECEIVED PURSUANT TO THE ACT AND FOR OTHER PURPOSES

JULY 24, 1986.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. UDALL, from the Committee on Interior and Insular Affairs, submitted the following

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REPORT

together with

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ADDITIONAL VIEWS

GOVT. PUBS.
DEPOSITORY

[To accompany H.R. 4162]

(Including the cost estimate of the Congressional Budget Office)

The Committee on Interior and Insular Affairs, to whom was referred the bill (H.R. 4162) to amend the Alaska Native Claims Settlement Act to provide Alaska Natives with certain options for the continued ownership of lands and corporate shares received pursuant to the Act and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Page 1, line 3, strike all after the enacting clause and insert the following:

That (a) this Act may be cited as the "Alaska Native Claims Settlement Act Amendments of 1986".

(b) Whenever, in this Act, an amendment is expressed in terms of an amendment to a section or provision, the reference shall be considered to be made to a section or provision of the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601 et seq.).

CONGRESSIONAL FINDINGS

SEC. 2. Congress finds and declares—

(a) the Alaska Native Claims Settlement Act (ANCSA) was enacted to achieve a fair and just settlement of all claims by Natives and Native groups based upon aboriginal land claims in a manner consistent with the real economic and

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social needs of the Alaska Natives, including maximum participation by Native people in decisions which affect their rights and property;

(b) the corporate model adopted by ANCSA is frequently ill-adapted to the reality of life in many Alaska Native villages and to traditional Native cultural values;

(c) although Congress mandated that the settlement be implemented rapidly and without litigation, the complexity of the land conveyance process and frequent and costly litigation have delayed the implementation of the settlement and significantly diminished its value;

(d) providing Alaska Natives maximum participation in decisions affecting their rights and property necessitates that ANCSA be amended to—

(A) provide the stockholders of each Native Corporation an opportunity to implement the settlement in the manner which they determine is best suited to their particular circumstances and needs, including, but not limited to, an opportunity to decide the manner in which Alaska Natives born after December 18, 1971, should participate in the settlement and whether the business corporation is the most appropriate entity to hold legal title to lands conveyed in partial settlement of aboriginal claims; and

(B) continue restrictions on the transfer of stock of Native Corporations until such time as the stockholders of a corporation may vote to terminate such restrictions; and

(e) both ANCSA, as amended, and this Act are Indian legislation enacted by Congress pursuant to its plenary authority under the Commerce Clause to regulate Indian affairs.

NEW DEFINITIONS

SEC. 3. (a) Section 3 (43 U.S.C. 1602) is amended by adding the word "group" after the word "individual," in subsection (h); striking the word "and" at the end of subsection (k); and by striking the periods at the end of subsections (l) and (m) and inserting, in lieu thereof, semi-colons.

(b) Section 3 is further amended by adding the following new subsections:

"(n) 'Native common stock' means the stock of a Native Corporation issued pursuant to subsection (g) of section 7 which carries with it the rights and restrictions provided for in paragraph (l) of subsection 7(h); and

"(o) 'descendant of a Native' means a lineal descendant of a Native or of an individual who would have been a Native if he or she were alive on December 18, 1971, or an adoptee of a Native or descendant of a Native whose adoption is recognized at law or in equity.".

NEW STOCK ISSUANCE

SEC. 4. Subsection (g) of section 7 (43 U.S.C. 1606(g)) is amended to read as follows:

"(g)(1) The Regional Corporation shall be authorized to issue such number of shares of Native common stock, divided into such classes of shares as may be specified in the articles of incorporation to reflect the provisions of this Act, as may be needed to issue one hundred shares of Native common stock to each Native enrolled in the region pursuant to section 5 of this Act.

"(2) Notwithstanding any other law, a Regional Corporation, if authorized by an amendment to its articles of incorporation, may issue up to one hundred shares of additional Native common stock to—

"(A) Natives born after December 18, 1971;

"(B) Natives who have attained the age of sixty-five; and

"(C) Natives who were eligible for enrollment pursuant to section 5, but who were not so enrolled;

for no consideration or for such consideration and upon such terms and conditions as may be specified in the articles of incorporation or by a resolution of the board of directors pursuant to authority expressly vested in it by the articles of incorporation.

"(3)(A) Notwithstanding any other provision of this Act and in addition to any other existing authority, any Regional Corporation, after the date of enactment of this paragraph, may amend its articles of incorporation to authorize the issuance of additional shares of stock as provided in this paragraph.

"(B) Such shares of stock may be—

"(i) divided into classes and series within classes, with preferences, limitations, and relative rights, including, without limitation, dividend rights, voting rights, liquidation preferences, and rights to share in distributions made to stockholders under subsections (j) and (m) of this section;

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"(ii) subject to alienability restrictions not in excess of the restrictions provided for in paragraph (1) of subsection (h) of this section;

"(iii) restricted in issuance to—

"(a) Natives who have reached the age of sixty-five; or

"(b) any other identifiable group of Natives, where such group is defined in terms of general applicability and, except as provided in subparagraph (H) of this paragraph, not in any way by reference to place of residence, family, or position as an officer, director, or employee of a Native Corporation, or stockholder of a Native Corporation other than the issuing Corporation; and

"(iv) issued as a dividend or other distribution upon outstanding shares of stock or for such consideration as may be permitted by law;

as may be provided in the articles of incorporation or an amendment thereto.

"(C) Any amendment to the articles of incorporation of a Regional Corporation which permits the issuance of classes or series of stock other than Native common stock shall specify the maximum number of shares of any such class or series and the maximum number of votes that may be held by shares of such class or series.

"(D) During any period in which the restrictions on alienation of Native common stock imposed by paragraph (1) of section 7(h) are in effect, no stock may be issued under this paragraph to a group of individuals composed only of employees, officers or directors of the Regional Corporation.

"(E) If any amendment to the articles of incorporation permits the issuance of classes or series of stock which, when issued, singly or in combination, may cause the outstanding shares of Native common stock to represent less than a majority of the voting power of all stock in the Regional Corporation, the stockholders of such corporation shall be expressly so advised in the proxy statement or other informational material distributed in advance of their vote upon the amendment.

"(F) In no event may shares of stock other than Native common stock be issued more than thirteen months after the date of the stockholder vote authorizing the issuance of such stock if, as a result of the issuance of such stock, the outstanding shares of Native common stock will represent less than a majority of the voting power of all stock in the Regional Corporation. The restriction of this subparagraph shall be of no further force and effect if shares of stock previously have been lawfully issued pursuant to this paragraph which have caused the shares of the Native common stock to represent less than a majority of the voting power of all stock in the Regional Corporation or if the restrictions upon alienation of Native common stock provided for in paragraph (1) of section 7(h) have expired under section 7a or have been terminated under section 7(h) by vote of the stockholders.

"(G) Notwithstanding the issuance of additional shares of Native common stock or new classes or series of stock pursuant to this paragraph, the Regional Corporation shall continue to apply the ratio last computed under subsection (m) of this section before the date of enactment of this paragraph for purposes of distributing funds under subsection (j) and (m) of this section.

"(H) If shares of different classes or series have been issued pursuant to this paragraph to non-village stockholders as described in subsection (m), distributions payable under subsections (j) and (m) of this section shall be made with respect to such classes or series in accordance with the rights, if any, of each class or of incorporation or an amendment thereto and, if so provided, the series to share in such distributions as provided in the articles right to share in such distributions may be established as a right or other security separate from any other shares issued to such non-village stockholders.

"(I) Common stock issued pursuant to this subsection which carries the same rights and restrictions provided for in section 7(h) or which is issued in substitution for Native common stock shall be deemed to be Native common stock as long as all such rights and restrictions are in effect with respect thereto.

"(4) The issuance of additional shares of Native common stock or other stock pursuant to paragraphs (2) and (3) of this subsection shall have no effect on the division and distribution of revenues pursuant to subsection (i) of this section.".

NATIVE COMMON STOCK: RIGHTS: ALIENATION RESTRICTIONS

SEC. 5. Subsection (h) of section 7 (43 U.S.C. 1606(h)) is amended to read as follows:

"(h)(1)(A) Except as otherwise provided in this paragraph and in paragraphs (3) and (4) of this subsection, Native common stock of a Regional Corporation issued pursuant to subsection (g) of this section shall—

"(i) carry a right to vote in elections for the board of directors and on such other questions as properly may be presented to stockholders;

"(ii) permit the holder to receive dividends or other distributions from the Regional Corporation; and

"(iii) vest in the holder all rights of a stockholder in a business corporation organized under the laws of the State of Alaska.

"(B) Until the termination of such restrictions by the stockholders under paragraph (2) of this subsection or pursuant to section 7a, Native common stock, inchoate rights thereto, and any dividends paid or distributions made with respect thereto, may not be—

"(i) sold;

"(ii) pledged;

"(iii) subject to a lien or judgment execution;

"(iv) assigned in present or future;

"(v) treated as an asset in a bankruptcy estate; or

"(vi) otherwise alienated.

"(C) The limitations contained in subparagraph (B) of this paragraph shall not apply to transfers of Native common stock if such transfers are made to Natives or descendants of Natives pursuant to a court decree of separation, divorce or child support or by a stockholder who is a member of a professional organization, association, or board which limits the ability of that stockholder to practice his or her profession because of holding stock issued under this section.

"(D) Except as provided in section 7a, the restrictions on alienation of Native common stock provided in this paragraph shall remain in effect until such time as the stockholders of a Regional Corporation vote to terminate such restrictions as provided in paragraph (2) of this subsection.

"(2)(A) Except as provided in subparagraph (F) of this paragraph, a Regional Corporation may terminate the restrictions on alienation imposed on its Native common stock by paragraph (1) of this subsection as provided in this paragraph.

"(B) At any time after the date of enactment of this paragraph, a resolution to terminate such restrictions may be adopted by the board of directors on its own motion or pursuant to a stockholder's petition as provided in paragraph (6)(D) of this subsection. A resolution of the board of directors of a Regional Corporation to terminate such restrictions shall be submitted to a vote of the stockholders in accordance with the procedures set forth in paragraph (6) of this subsection.

"(C) A resolution to terminate restrictions adopted pursuant to this paragraph shall make provision for the time of termination, either by the establishment of the date certain or the description of a specific event upon which the restrictions shall terminate.

"(D) The approval of a resolution under this paragraph shall be considered to be an amendment to the articles of incorporation of the Regional Corporation for the purposes of paragraph (6) of this subsection. On the date of termination as established in such resolution, all Native common stock previously issued shall be deemed canceled and shares of stock of the appropriate class shall be issued to each holder of Native common stock, share for share, subject only to such restrictions as may be provided in an amendment to the articles of incorporation adopted pursuant to paragraph (7) of this subsection or in agreements between the corporation and the individual stockholders.

"(E) The rejection of a resolution adopted pursuant to this paragraph by the stockholders of a Regional Corporation shall not preclude votes on subsequent resolutions adopted and submitted to a vote pursuant to this paragraph.

"(F) Notwithstanding the provisions of this paragraph, if the board of directors of the Bristol Bay Native Corporation or any Village Corporation in the Bristol Bay region adopts, within one year of the date of enactment of this paragraph, a resolution electing to follow the procedures set forth in section 7a of this Act, the provisions of this paragraph shall not be applicable to such corporation.

"(3)(A) Upon the death of any holder of Native common stock, ownership of such stock shall be transferred in accordance with the last will and testament of such holder or under applicable laws of intestate succession, except that, in the event the deceased stockholder fails to dispose of all of his or her Native common stock by will and if such stockholder has no heirs under applicable laws of intestacy who are Natives or descendants of Natives, such Native common stock shall escheat to the appropriate Regional Corporation.

"(B) In the event that stock would be transferred by devise or inheritance to a person not a Native or a descendant of a Native, the Regional Corporation shall have the right to purchase such stock for its fair market value.

"(4)(A) Notwithstanding the restrictions on alienation imposed by paragraph (1) of this subsection, any Regional Corporation is hereby authorized to amend its articles

of incorporation to permit it to purchase and, for that purpose, its stockholders to sell, any or all of its Native common stock then issued and outstanding.

"(B) Payment for such stock shall be made out of—

"(i) unreserved or unrestricted earned surplus of the corporation; or

"(ii) net profits for the fiscal year in which the purchase is being made and for the preceding fiscal year, except when the corporation is unable to pay its debts as they become due in the usual course of business.

"(C) For the purpose of this paragraph, net profits derived from the exploitation or liquidation of timber resources or subsurface estate may be determined without consideration of depletion of those assets resulting from lapse of time, consumption, liquidation, or exploitation.

"(D) Shares of stock purchased pursuant to this paragraph shall become nonvoting treasury stock or may be canceled by the Regional Corporation in accordance with law.

"(E) In the case of each purchase of Native common stock pursuant to this paragraph, the board of directors shall determine a price at which such purchase will be made. Such price, if determined in good faith, shall conclusively be presumed to be fair. In determining such price, the board of directors, at its option, may exclude from such determination the value of the land or any interest therein received by the Regional Corporation pursuant to this Act which is committed by the corporation to Native traditional or cultural uses or is of speculative or unknown value on the date such determination is made.

"(F) With respect to any purchase under this paragraph, all holders of such Regional Corporation's Native common stock shall be given a fair opportunity to participate in any offer by the corporation to purchase shares of its Native common stock on the same basis as is made available to any holder of such stock.

"(5) Native common stock transferred through inheritance to a person who is not a Native shall not carry voting rights. The lapse of the right to vote in a holder of Native common stock upon a transfer by inheritance or otherwise may be restored by the adoption of an amendment to the articles of incorporation, but only if such shares of stock are held by a Native or a descendant of a Native.

"(6)(A) Notwithstanding any provision of Alaska law, other than those which relate to proxy statements or solicitations which are not inconsistent with this paragraph, and except as provided in section 7a of this Act,—

"(i) any amendment to the articles of incorporation of a Regional Corporation authorized by this subsection or subsection (g) of this section;

"(ii) a transfer of assets made pursuant to section 7b;

"ii) a resolution described in paragraph 2(C) of this subsection; or

"(iv) a resolution described in paragraph (B) of this paragraph;

shall be approved as provided in this paragraph.

"(B) The board of directors shall adopt a resolution setting forth the proposal and directing that it be submitted to a vote at the annual, or a special, meeting of the stockholders. One or more such amendments or resolutions may be submitted to the stockholders and voted upon at one meeting.

"(C) A written or printed notice, setting forth the proposal or summary of the changes to be effected, or the proxy statement and related proxy material if required under applicable law, shall be delivered by hand or sent by first class mail to each stockholder of record entitled to vote not less than fifty nor more than sixty days before the date of the meeting at the address of such stockholder as it appears on the records of the corporation.

"(D) With respect to any amendment or resolution described in subparagraph (A) of this paragraph, if the holders of at least fifteen per cent or, in the case of an amendment to terminate restrictions on the alienability of Native common stock, one-third of the outstanding shares of Native common stock entitled to be voted petition the board of directors to adopt and submit such amendment or resolution to the vote of the stockholders, the board of directors shall adopt a resolution to that effect and submit it to the stockholders as provided in this paragraph. The procedural and disclosure requirements pertaining to the solicitation of proxies under State law shall govern solicitation of signatures on any such petition. If the petition meets the aforementioned standards and if—

"(i) the board of directors agrees with such petition, it shall submit the resolution and either the proponent's statement or its own statement in support of the resolution to the stockholders for a vote; or

"(ii) the board of directors disagrees with the petition for any reason, it shall submit the resolution and the proponent's statement to the stockholders and may, at its discretion, submit an opposing statement and/or an alternative resolution.

"(E)(i) Any amendment to the articles of incorporation that would have the effect of removing the restrictions on alienation of Native common stock provided in paragraph (1) of this subsection shall be approved if such amendment receives the affirmative vote of at least a majority of the outstanding shares of Native common stock entitled to vote on such amendment.

"(ii) Any other amendment or resolution described in subparagraph (A) of this paragraph shall be approved—

"(a) if voted upon by at least fifty-one per cent of the votes represented by the capital stock of the Regional Corporation entitled to be voted on such amendment or resolution; and

"(b) if such amendment or resolution receives the affirmative vote of at least a majority of all votes cast,

subject to the right of the board of directors of the Regional Corporation to provide a quorum or vote requirement greater than subclause (a) or (b) of this clause, or both, and to the right of the Regional Corporation in its articles of incorporation to provide a vote by classes of stock for all or any of such actions.

"(F) If the result of a stockholder vote under this paragraph is the continuation of the restrictions against alienation of Native common stock, a stockholder who voted in favor of termination of the restriction may demand and receive payment from the corporation for all of his or her shares, but only if, contemporaneously with such vote, the stockholders approve a resolution providing for such right. The procedure established by Alaska law for the exercise of the right of a dissenting stockholder shall be followed, if such right is made available pursuant to this subparagraph.

"(G) A resolution adopted pursuant to subparagraph (F) of this paragraph may provide that Native common stock shall be valued on the basis set forth in section 7a(f)(2) or that the form of payment to dissenting stockholders shall be as provided in section 7a(f)(3).

"(7) Notwithstanding a stockholder vote to terminate restrictions on alienation of Native common stock under paragraph (2) of this subsection or the expiration of such restrictions pursuant to section 7a, a Regional Corporation, prior to the effective date of such termination, may amend its articles of incorporation to impose any restrictions upon the replacement common stock issued pursuant to paragraph 2(D) of this subsection permitted under applicable law as well as restrictions providing for—

"(A) the denial of voting rights to any holder of such replacement common stock who is not a Native or descendant of a Native; and

"(B) the granting to the corporation, or to the corporation and the stockholder's immediate family, on reasonable terms, the first right to purchase a stockholder's replacement common stock prior to the sale or transfer of such stock, other than a transfer by inheritance, to any other party, including a transfer in satisfaction of a lien, writ of attachment, judgment execution, pledge, or other encumbrance.".

BRISTOL BAY REGION: SPECIAL PROVISIONS

SEC. 6. The Alaska Native Claims Settlement Act is further amended by adding a new section as follows:

"SEC. 7a. (a) If the Bristol Bay Native Corporation or any Village Corporation located in the Bristol Bay region adopts a resolution as provided in paragraph (2)(F) of subsection 7(h), such corporation may extend the restrictions on alienation of Native common stock as provided in this section.

"(b)(1) Within two years after the election under paragraph (2)(F) of section 7(h) and, if the quorum requirement specified in subsection (e) of this section is not satisfied, annually thereafter, the board of directors of such corporation shall adopt, and submit to a vote of its stockholders, a resolution to amend its articles of incorporation to extend the restrictions on alienation of its Native common stock.

"(2) Such resolution shall provide for an extension of the restrictions for a period of not less than twenty nor more than fifty years.

"(3) If a resolution under paragraph (1) of this subsection is adopted, such corporation may, prior to the expiration of the period of extension or any successor extension period, further extend the restrictions under the provisions of this section.

"(c)(1) If any vote conducted pursuant to subsection (b) of this section is ineffective because of a continuing or repeated lack of quorum as provided in subsection (e) of this section or if the holders of Native common stock defeat a resolution to continue restrictions on alienation, the board of directors shall adopt, and submit to the vote

of the stockholders, a resolution which establishes the date or describes the specific event upon which the restrictions shall terminate.

"(2) If no such resolution is voted upon and approved, the restrictions shall terminate one year from either the date of the vote disapproving the resolution to extend such restrictions or the last date on which a lack of a quorum existed, as the case may be, or on December 18, 1991, whichever date later occurs.

"(3) On the date of termination of such restrictions, all Native common stock of such corporation previously issued shall be deemed canceled and shares of stock of the appropriate class shall be issued to each stockholder, share for share, subject only to such restrictions as may be provided by the articles of incorporation, including any amendment thereto adopted pursuant to section 7(h)(7), or in agreements between the corporation and individual stockholders.

"(d)(1) Notwithstanding any provision of Alaska law, except those relating to stockholders' rights of petition and to proxy statements and solicitations which are not inconsistent with the provisions of this section,—

"(A) any amendment to the articles of incorporation of a corporation authorized by this section or subsections 7(g) and 7(h)(4), (5) and (7) of this Act;

"(B) a transfer of assets made pursuant to section 7b;

"(C) a resolution described in subsection (c) of this section; or

"(D) a resolution described in subsection (f)(2) of this section;

shall be approved as provided in this subsection.

"(2) The board of directors shall adopt a resolution setting forth the proposal and directing that it be submitted to a vote at the annual, or a special, meeting of the stockholders. One or more such amendments or resolutions may be submitted to the stockholders and voted upon at one meeting.

"(3) A written or printed notice setting forth the proposal or a summary of the changes to be effected shall be given to each stockholder of record entitled to vote not less than fifty nor more than sixty days before the date of the meeting, either personally or by mail.

"(e)(1) In order for a resolution to be approved under this section, the proposal must be voted upon by at least 51 percent of the outstanding shares of Native common stock entitled to be voted and must receive the affirmative vote of at least 50 percent plus one of the shares voted.

"(2) Notwithstanding paragraph (1) of this subsection, the stockholders may require a minimum vote of more than 51 per cent of the outstanding shares of Native common stock entitled to be voted or an affirmative vote greater than 50 per cent of the shares voted, or both, to approve any such proposal.

"(f)(1) If the result of a stockholder vote under this section is the extension of restrictions against alienation or a transfer of assets pursuant to section 7b, a stockholder who voted against the extension or transfer may demand and receive from the corporation the fair market value of his or her shares. Unless longer periods of time are authorized in the bylaws of the corporation, the procedure established by Alaska law for the exercise of the right of a dissenting stockholder to demand and receive payment for his or her shares in certain cases shall be followed to the extent such right is made available pursuant to this subsection.

"(2) The stockholders of the corporation may adopt a resolution, concurrent with the vote authorized under subsection (a) of this section, which provides that, in the event dissenters' rights are exercised,—

"(A) the Native common stock shall be valued as restricted stock, having the same restrictions for the same period made applicable to the stock by the vote; and/or

"(B) the value of the land or any interest therein received by the corporation pursuant to this Act which—

"(i) is committed by the corporation to Native traditional or cultural uses; and/or

"(ii) is of speculative or unknown value on the date such resolution is adopted;

shall be excluded by the stockholder, the corporation and any court in the determination of the fair market value of the shares of Native common stock to be purchased from such stockholder by the corporation; and/or

"(C) payments to each dissenting stockholder shall be made by the corporation through the issuance to such stockholder of a non-negotiable note in the principal amount of the payment due, which note shall be secured either by—

"(i) a payment bond issued by an insurance company or financial institution;

"(ii) the deposit in escrow of securities or property having a fair market value equal to at least 125 per cent of the face amount of the note; or

"(iii) a lien upon the real property interests of the corporation valued at 125 per cent or more of the face amount of the note, other than lands or interests therein which are committed to Native traditional or cultural uses and the percentage interest in its timber resources and subsurface estate that would result in the recognition of "Gross Section 7(i) Revenues" within the meaning of, and pursuant to, Article II, Section 1(d) of the 7(i) agreement cited in subsection (f)(2) of section 7b of this Act.

"(3) Any note issued pursuant to this subsection shall provide that—

"(A) interest shall be paid semi-annually, beginning as of the date the corporation elected to extend stock restrictions on Native common stock or transfer assets pursuant to section 7b of this Act, at the rate applicable on such date to obligations of the United States having a maturity of one year; and

"(B) the principal amount and any undistributed interest shall be payable to the former stockholder or his or her heirs or devisees—

"(i) at any time, at the option of the corporation; or

"(ii) if not so called, on December 18, 1991, or, if the restrictions on Native common stock otherwise would have expired on a later date, on such date or five years after the date of election, whichever occurs first, or, if the transfer of assets occurs after December 18, 1991, then five years after the date of such transfer.".

TRANSFER OF ASSETS: QUALIFIED TRANSFEREE ENTITY

SEC. 7. The Alaska Native Claims Settlement Act is further amended by adding the following new section:

"SEC. 7b. (a) Any Native Corporation or the stockholders of a Native Corporation which has been dissolved involuntarily under applicable law is hereby authorized to convey any or all of its assets, including the title to the surface or subsuface of land, to a qualified transferee entity as provided in this section. In cases where a Native Corporation has been involuntarily dissolved under State law, a State court of appropriate jurisdiction, upon petition of no less than 25 of the former stockholders of such corporation, may order the transfer of real property assets and such other assets remaining after satisfaction of outstanding debts upon an affirmative vote of individuals who were shareholders in the dissolved corporation on a resolution as provided in Section 7(h)(6) or 7(c) without requiring that the resolution be adopted by the Board of Directors.

"(b) The conveyance of such assets shall be as provided in a resolution, including a provision for the payment of consideration or no consideration as desired, adopted by the board of directors of such corporation and submitted to a vote of its stockholders as provided in section 7(h)(6) or section 7a of this Act, as the case may be.

"(c) An entity shall be qualified to accept a transfer of assets conveyed pursuant to this section if it—

"(1) is organized pursuant to, or recognized by, State or Federal law;

"(2) has a membership composed of persons whose interest in the entity is non-transferable;

"(3) provides membership for every person who holds Native common stock in the corporation making the transfer of assets on the day before the date of such transfer; and

"(4) except as provided in paragraph (3), accepts as new members only Natives or descendants of Natives.

"(d) Notwithstanding any provision of State or Federal law, a qualified transferee entity is authorized to——

"(1) by a vote of its members,

"(A) limit its membership to Natives or descendants of Natives; and

"(B) admit to membership non-Natives only for the purpose of complying with paragraph (3) of subsection (c) of this section;

"(2) distribute cash and other assets to its members, except that such entity shall not convey fee title to land or interests therein unless authorized or required be section 14(c) or 21(j) of this Act; and

"(3) exchange lands or interests therein pursuant to the provisions of section 22(f) of this Act and section 1302(h) of the Alaska National Interest Lands Conservation Act.

"(e) The provisions of subsections (d) and (e) of section 21 of this Act shall continue to apply to any lands or interests therein conveyed by a Native Corporation to a qualified transferee entity pursuant to this section.

"(f)(1) Any revenues subject to distribution under section 7(i) of this Act derived from assets conveyed pursuant to this section shall remain subject to section 7(i) to

the same extent such revenues would have been subject if the conveyance had not occurred.

"(2) A Regional Corporation shall not convey assets subject to section 7(i) to more than one qualified transferee entity. Prior to receiving a conveyance of an asset subject to section 7(i), a qualified transferee entity shall agree in writing—

"(A) to be bound by the provisions of the agreement dated June 29, 1982, among and between the parties to *Aleut Corporation et al.* v. *Arctic Slope Regional Corporation* (Civ. Act. A75–53 D. Ak.); and

"(B) to waive its sovereign immunity, if any, with respect to claims arising under section 7(i) or this section.

"(3) The Regional Corporation or, in the case of its dissolution, another single entity designated by its stockholders or the United States district court, as appropriate, shall be responsible for administering the provisions of section 7(i) and the June 29, 1982, agreement with respect to assets subject to section 7(i) conveyed by such corporation pursuant to this section.

"(4) After the conveyance of an asset subject to section 7(i) by a Regional Corporation, such asset shall be security for the payment by such corporation or its successor entity of all revenues which the corporation is obligated to distribute to other Regional Corporations pursuant to section 7(i).

"(g)(1) If a resolution conveying assets is approved by a stockholder vote pursuant to subsection (b) of this section, any stockholder who voted against the resolution may demand and receive payment from the corporation for all of his or her shares, but only if, concurrent with such vote, the stockholders of the Native Corporation adopt a resolution expressly providing for such right.

"(2) The procedure established by Alaska law for the exercise of the right of a dissenting stockholder to demand and receive payment for his or her shares in certain cases shall be followed if such right is made available pursuant to this subsection.

"(3) For the purpose of this section, a resolution establishing dissenters' rights may provide that the Native common stock shall be valued on the basis set forth in section 7a(f)(2) and that the form of payment to dissenting stockholders shall be as provided in section 7a(f)(3).".

DISCLAIMER: TRIBAL GOVERNMENT

SEC. 8. The Alaska Native Claims Settlement Act is further amended by adding a new section as follows:

"SEC. 7c. No provision of the Alaska Native Claims Settlement Act Amendments of 1986 shall be construed as enlarging or diminishing or in any way affecting the scope of governmental powers, if any, of an Alaska Native village entity, including entities organized under the Act of June 18, 1934 (48 Stat. 987), as amended or Traditional Councils.

SEC. 9. The Alaska Native Claims Settlement Act is further amended by adding a new section as follows:

"SEC. 7d. The Aleut Corporation, Cook Inlet Region, Inc., and Koniag, Inc., and any Village Corporation within the Aleut and Cook Inlet regions may, by a vote of its board of directors within one year after the effective date of this section, elect to comply with the provision of section 7a with respect to a stockholder vote on the question of whether to continue restrictions on alienation of Native common stock imposed by paragraph (1) of section 7(h) beyond December 18, 1991.".

VILLAGE AND URBAN CORPORATIONS: NATIVE GROUPS

SEC. 10. Subsection (c) of section 8 (43 U.S.C. 1607(c)) is amended to read as follows:

"(c)(1) The provisions of subsections (g), (h), and (o) of section 7 and of section 7a of this Act relating to Regional Corporations shall apply in all respects to Village Corporations, Urban Corporations and Native groups, except that—

"(A) audits need not be transmitted to the Committee on Interior and Insular Affairs of the House of Representatives or to the Committee on Energy and Natural Resources of the Senate; and

"(B) subject to the provisions of paragraph (2) of this subsection and section 7a, restrictions on the alienation of Native common stock of such corporations, inchoate rights thereto, and any dividends paid or distributions made with respect thereto shall continue after December 18, 1991.

"(2) The restrictions on alienation of Native common stock of Village Corporations, Urban Corporations and incorporated Native groups may be terminated or extended by the adoption of an amendment to their articles of incorporation to such

effect pursuant to the provisions of paragraphs (2) and (6) of subsection 7(h) or of section 7a, as the case may be, except that—

"(A) with respect to action under section 7(h), only one such vote may be held prior to December 18, 1991 and only once annually thereafter; and

"(B) with respect to action under section 7a, votes shall be held as provided in subsection (b)(1) of section 7a.".

CONSTITUTIONALITY: U.S. COURT JURISDICTION

SEC. 11. Section 10 (43 U.S.C. 1609) is amended by adding the following new subsection:

"(c)(1) The United States District Court for the District of Alaska is vested with exclusive original jurisdiction over any action challenging the constitutionality of any provision of the Alaska Native Claims Settlement Act Amendments of 1986. Such action shall be heard as determined by a court of three judges as provided in section 2284 of title 28, United States Code, with a direct appeal from any final judgment to the United States Supreme Court.

"(2) It being the express intention and direction of Congress that in no circumstances shall enactment of this Act result in any liability to the United States, the court shall not enter a money judgment against the United States in fashioning appropriate relief upon a determination that any of such sections violates the Fifth Amendment to the United States Constitution."

SUBSURFACE CONVEYANCE TO VILLAGE ENTITY

SEC. 12. Section 14 (43 U.S.C. 1613) is amended by adding the following new subsection:

"(i)(1) A Regional Corporation may convey and subsurface estate owned by such corporation to a village entity which acquired or currently owns the surface estate pursuant to this Act.

"(2) Notwithstanding any conveyance pursuant to paragraph (1) of this subsection, the Regional Corporation shall continue to receive the thirty per cent of the revenues from any development of the subsurface estate it would have retained had there been no such conveyance and the remaining seventy per cent of such revenues shall be distributed in accordance with section 7(i).

"(3) Any conveyance under this subsection shall be subject to the provisions of section 7b as if the village entity were a qualified transferee entity. The document or documents effecting such conveyance shall be recorded by the Regional Corporation, together with copies of section 7b and this subsection, in the land records of the appropriate recording district.

"(4) The village entity to which any subsurface estate is conveyed pursuant to this subsection may not convey or otherwise transfer all or any part of such subsurface estate to any other entity without the express consent of the transferor Regional Corporation.".

REAL PROPERTY INTERESTS: IMMUNITIES

SEC. 13. Paragraph (1) of subsection 21(d) (43 U.S.C. 1620(d)(1)) is amended to read as follows:

"(1)(A) All land and interests therein conveyed pursuant to this Act, to any Native individual, Native group, Village or Regional Corporation, or a corporation established pursuant to section 14(h)(3) of this Act shall be, so long as such land and interests therein are not developed or leased to third parties or are used solely for purposes of exploration, entitled from the date of their conveyance to immunity from—

"(i) adverse possession and similar claims based upon legal theories of estoppel;

"(ii) real property taxes by any governmental entity;

"(iii) judgment resulting from any claim based upon or arising under title 11 of the United States Code relating to bankruptcy (or any successor statute), other insolvency or moratorium laws, or other laws affecting creditors' rights generally;

"(iv) unless such immunity is waived by the corporation in a valid and binding contract executed prior to the commencement of such proceedings, judgment in any action at law or equity to recover sums owed or penalties incurred by any Native Corporation or Native group or any officer, director, or stockholder of any such corporation or group, and

"(v) Involuntary distribution or conveyance related to the involuntary dissolution of the Native Corporation.

"(B) For the purposes of this paragraph, lands shall not be considered to be developed solely as a result of construction, installation, or placement upon such land of any structure, fixture, device or other improvement intended to enable, assist, or otherwise further the subsistence or other customary or traditional uses of such land.

"(C) Immunities provided for in this paragraph shall be in addition to those immunities or other benefits to which such lands or interests therein may be entitled under the Alaska National Interest Lands Conservation Act, but shall not apply to any judgment in any action at law or equity or to any arbitration award arising out of any claim regarding revenue sharing under section 7(i) of this Act.

"(D) Land to which this paragraph applies and lands conveyed pursuant to section 7b of this Act shall be subject to condemnation for public purposes in accordance with the provisions of applicable State law.

"(E) Except as provided in section 14(c)(3), no trustee, receiver or custodian vested under applicable Federal or State law with any right, title or interest of any Native Corporation or Native group may assign or lease to a third party and land subject to this paragraph which has not therefore been developed or leased, or commence development or use of the land other than for purposes of exploration, and such trustee, receiver or custodian may not convey any right, title or interest in land and interests therein protected under this paragraph to any third party, except pursuant to a judgment or arbitral award regarding revenue sharing under section 7(i).".

CONFORMING AMENDMENT: SECTION 21

SEC. 14. Subsection (f) of section 21 (43 U.S.C. 1620(f)) is amending by striking the phrase "Until such time as the limitations upon alienation of Native common stock have been removed pursuant to section 7(h)(2) or have expired pursuant to section 7a of this Act".

SEVERABILITY CLAUSE

SEC. 15. Section 27 (85 Stat. 688) is amended to read as follows:

"SEC. 27. The provisions of this Act, as amended, are severable and, if any provision of this Act is determined by a court of competent jurisdiction to be invalid, such invalidity shall not affect any other provision.".

CORPORATIONS EXEMPT FROM SECURITIES LAWS

SEC. 16. Section 28 (43 U.S.C. 1625) is amended to read as follows:

"SEC. 28. (a)(1) Any corporation organized pursuant to this Act shall be exempt from the provisions of the Investment Company Act of 1940 (54 Stat. 789), the Securities Act of 1933 (48 Stat. 74), and the Securities Exchange Act of 1934 (48 Stat. 881), as amended, through the earlier of the date after—

"(A) the date on which the corporation issues any shares of stock which will not be issued solely to Natives or descendants of Natives or to entities established for the sole benefit of Natives or descendants of Natives; or

"(B) the date of which the corporation removes the limitations on alienation of Native common stock as provided for in section 7(h)(2) or the date on which such restrictions terminate under section 7a of this Act.

"(2) Nothing in this section shall be construed to mean that any such corporation shall or shall not, after such date, be subject to the provisions of such Acts.

"(b)(1) Any such corporation which, but for this section, would be subject to the provisions of the Securities Exchange Act of 1934 shall transmit to its stockholders each year a report containing substantially all the information required to be included in an annual report to stockholders by a corporation which is subject to the provisions of such Act.

"(2) For the purposes of determining the applicability of the registration requirements of the Securities Exchange Act of 1934 after the date determined pursuant to subsection (a) of this section, holders of Native common stock shall be excluded from the calculation of the number of shareholders of record pursuant to section 12(g) of that Act.

"(c) The provisions of the Investment Company Act of 1940 shall not, in any event, apply to any corporation organized pursuant to this Act prior to January 1, 2001.".

FEDERAL PROGRAMS: MINORITY CORPORATION

SEC. 17. Section 29 (43 U.S.C. 1626) is amended by adding the following new subsection:

"(c) In determining the eligibility of any household or individual Native or descendant of a Native to participate in the Food Stamp program, receive assistance under the Social Security Act or financial assistance or benefits available under any other Federal or Federally assisted program otherwise available to the Native people of Alaska as citizens of the United States and of the State of Alaska, any compensation, remuneration, revenue, stock, land, or other benefits received by any individual, any household or any member of such household under this Act, including land received from such individual's Native Corporation or Native group organized under this Act, shall be disregarded and shall not be considered as a resource or otherwise utilized as a basis for making such determination.

"(d) Until such time as less than fifty percent of the voting power of a Native Corporation is represented by shares of outstanding Native common stock or any other securities of such corporation held by Natives or descendants of Natives entitled to vote, such Native Corporation for all purposes of Federal law shall be considered a corporation owned and controlled by Alaska Natives.".

CONFORMING AMENDMENT: SECTION 30

SEC. 18. Subsection (b) of section 30 (43 U.S.C. 1627(b)) is amended by striking the phrase "prior to December 19, 1991" and inserting, in lieu thereof, the phrase "while the Native common stock of all corporations subject to merger or consolidation remain subject to restraints on alienation".

PURPOSE

The purpose of H.R. 4162 is to amend the Alaska Native Claims Settlement Act to provide certain options to Alaska Natives for the continued ownership of lands and corporate shares received pursuant to the Act.

HISTORY

H.R. 4162 amends the Alaska Native Claims Settlement Act (ANCSA) in several respects. The two major issues addressed by the bill are the expiration, on December 18, 1991, of the restrictions imposed by that Act on the alienation of shares of stock in Native Corporations and the transfer of assets by such corporations to other entities.

The Alaska Native Claims Settlement Act (ANCSA) was passed in 1971 to settle the long-standing claims of the Indians, Eskimos, and Aleuts of Alaska based upon aboriginal use and occupancy. The Native rights to lands in Alaska had been recognized and preserved in the treaty with Russia acquiring Alaska; the Territorial Enabling Act; and the Alaska Statehood Act.

Between the Treaty of Cession in 1867 and the enactment of ANCSA in 1971, Congress acted on at least six occasions to protect the native use of lands. In the 1884 Organic Act establishing a civil government for Alaska, Congress provided that:

> The Indians or other persons in said district shall not be disturbed in the possession of any lands actually in their use or occupation or now claimed by them but the terms under which such persons may acquire title to such lands is reserved for future legislation by Congress.

In 1891, Congress established a reservation for the Metlakatla Indians in southeast Alaska. In 1906, Congress passed the Alaska Native Allotment Act permitting Natives of Alaska to select tracts

of lands to be held in trust for them by the United States. To further protect Native use of lands, Congress enacted, in 1926, the Native Townsite Act which provided for the conveyance of public lands to trustees representing village people. In 1936, Congress amended the Indian Reorganization Act to make several provisions of that Act applicable to Alaska Natives. Finally, in 1958, Congress passed the Alaska Statehood Act which provided that the State of Alaska disclaimed all rights in

> Any lands of other property (including fishing rights), the right or title to which may be held by any Indian, Eskimos, or Aleuts * * * or is held by the United States in trust for said Natives.

In addition, the Statehood Act provided that State land selections could be made only from "vacant, unappropriated, and unreserved" public lands.

The existence of Native land rights and claims presented an obstacle to the settlement and development of Alaska. As a consequence, Congress began consideration of legislation to resolve the outstanding land claims conflicts, resulting in the enactment of ANCSA in 1971. ANCSA extinguished the aboriginal title of Natives to lands in Alaska. In return, ANCSA provided for the conveyance ot the Natives of approximately 44,000,000 acres of land and the payment of $962,000,000 as a monetary settlement.

To provide a framework for the implementation of the provisions of the Act and for the administration of Native lands and funds, Congress departed from the conventional method of dealing with Indian tribes and settling tribal land claims. ANCSA adopted the corporate structure as the system to carry into effect the terms of the settlement.

Alaska was divided into twelve geographic regions, with each region being composed, as far as practical, of Natives and Native villages having a common language and heritage and sharing common interests. These regions approximated areas covered by the operations of then-existing Native associations and organizations. The Act required the Natives of each region to incorporate under Alaska State law a Regional Corporation to conduct business for profit. The articles of incorporation of these Regional Corporations were required to include provisions necessary to carry out the provisions of ANCSA.

In addition, ANCSA provided that Native villages within each region which met certain standards were entitled to share in the settlement provisions and were required to establish profit or nonprofit corporations under Alaska State law.

The Act required the Secretary of the Interior to prepare a roll of all Natives, one-fourth or more Alaska Indian, Eskimo, or Aleut blood, who were born on or before, and living on December 18, 1971. With certain exceptions not here relevant, each Native on that roll had to be enrolled to one of the twelve regions and, where appropriate, to one of the several villages within such region.

The Regional Corporation was required by the Act to issue to each Native enrolled in that region 100 shares of the stock of the corporation. Except for transfers pursuant to a court decree of separation, divorce or child support, the Act provided that these shares of stock would be inalienable for a period of twenty years

after the date of enactment of ANCSA, i.e., until December 18, 1991. Stock issued by a Native village corporation was made subject to the same restrictions on alienation.

Finally, ANCSA provided for the distribution of the land and monetary settlement among the twelve regions and, within each region, between the regional corporation and its several village corporations. Through this process, Alaska Natives became shareholders in regional and village corporations which, in turn, were to hold title to lands conveyed under the Act.

BACKGROUND

In enacting ANCSA, Congress adopted a novel, experimental approach in dealing with Native people. In section 2(b) of the Act, a congressional finding was made that—

> The settlement should be accomplished rapidly, with certainty, in conformity with the real economic and social needs of Natives, without litigation, with maximum participation by Natives in decisions affecting their rights and property * * *"

Fifteen years after the enactment of ANCSA, few of these goals have been achieved.

In a submission made in 1984 to the President's Commission on Indian Reservation Economies, Janie Leask, President of the Alaska Federation of Natives, stated:

> What has fallen on Native people and their institutions during the past thirteen years is a legal and administrative burden so overwhelming that in many ways implementing ANCSA has become an end itself * * * The entire effort has drawn off tens of millions of dollars which more properly could have been put into business investments, human-resource development, communication between stockholders and corporate leaders, and training and technical assistance for village corporation personnel * * * If the implementation costs were heavy for regions, it was worse for the villages, especially the small ones, because they had so little cash from the Alaska Native Fund to begin with. We now have villages which are almost broke from going through the steps of incorporation, corporate elections, enrollments, stock issuances, land conveyances, CPA audits, meetings, decisions, public reporting, etc., etc., etc. They haven't made much money or really engaged in much economic development activity. But they have implemented ANCSA. And many of them have now come to a point where they may have to sell some of their land in order to keep going.

It is of concern to the Committee that settlement has not been accomplished rapidly and with certainty. Fifteen years after enactment, Native corporations have received patents to less than 8% of their 44,000,000-acre land entitlement. While they have received Interim Conveyances to 34,400,000 acres, they are still awaiting Interim Conveyances on 2,600,000 acres. In addition to the delay in conveying, the lack of the certainty envisioned by Congress in enacting ANCSA is evidenced by the need to pass at least eight

amending Acts, i.e., Public Law 94-204; Public Law 94-456; Public Law 95-178; Public Law 95-600; Public Law 96-55; Public Law 96-311; Public Law 96-505; and Public Law 96-487, clarifying uncertainties and ambiguities and correcting defects in ANCSA.

From most of the testimony received by the Committee, it is apparent that ANCSA has not, in every case, conformed to, or met, the real economic and social needs of many Natives.

At the regional level, the ANCSA experiment in the corporate model has met with some success. A few of the Regional Corporations can be viewed as moderately successful from a corporate standpoint, particularly considering the problems presented by the start-up of any corporation. Blessed with readily-exploitable natural resources, advantageous geographic location, or wise investment policies, the corporations have been able to show a profit and make significant dividend payments to their Native shareholders. In the middle are the majority of the Regional Corporations which have, to date, met with only moderate success. With the final payments of the monetary settlement of ANCSA out of the Alaska Native Fund, the shareholders in these corporations have realized little, if any, individual benefit from the activities of the corporation. At the other end of the spectrum are a few Regional Corporations which are struggling, with some facing bankruptcy. One has already filed for bankruptcy under Chapter 11.

It is at the village level, however, that it appears that the corporate model of ANCSA has generally failed to meet the economic, social and cultural needs of the Alaska Native. While offered the option by ANCSA of incorporating as a profit or non-profit corporation, they were, practically, required to incorporate as profit entities if they were to be able to distribute their share of the Alaska Native Fund payments to their village members. With some exceptions, few of the corporations located in remote, isolated villages could succeed as profit-making, commercial enterprises. At least one Village Corporation has already filed under Chapter 11 and many others are facing that prospect.

Recognizing this inevitable prospect, all but one of the Village Corporation of the Kotzebue region have merged with NANA, Inc., the Regional Corporation. The merger of regional and village corporations has been pursued in other regions as well. As noted in the Report of the Alaska Native Review Commission, "Village Journey", by Thomas R. Berger—

> In most villages, no commercial business could have succeeded, and the bankruptcy of many village corporations seems to be inevitable. In this event, the corporation's lands, in many cases its only asset, can be seized by creditors. Under ANCSA, villagers were forced to place all of their ancestral lands in the corporation.

The testimony presented to the Committee by Native witnesses reflects the growing concern among village leaders and people about their future under the ANCSA structure.

Most of the Native testimony, reflecting the issues raised in this report, centered on three major topics. First, the Natives are alarmed about the impending arrival of December 18, 1991, the date upon which the statutorily-imposed restrictions on the alien-

ation of stock in the Regional and Village Corporations will expire. It is possible that, after the passage of that date, stock in the Native Corporations will go out of Native ownership and they will lose control of the corporations and, with it, their lands. The possibility of loss of land ownership by Alaska Natives is of paramount concern to the Committee.

The Natives urge amendment to ANCSA to correct a provision of the Act which precludes participation in the settlement by younger Natives who were born after December 18, 1971, and therefore, not eligible for enrollment as Alaska Natives and not eligible for shares of stock in the corporations.

Finally, the Natives are greatly concerned that continued implementation of ANCSA in its present form will, in one way or the other, result in the loss of their lands.

Committee Amendment and Explanation

The Committee adopted an amendment in the nature of a substitute. In general, the substitute constituted a technical redraft of the language of the bill as introduced. A detailed explanation of the provisions of H.R. 4162, as reported, is incorporated in the section-by-section analysis later in this report. An explanation of the major provisions will be dealt with in this part.

As reported by the Committee, H.R. 4162 does not abandon the corporate system put in place by ANCSA. Many natives feel that this model, particularly at the regional level, can play an important role in achieving the goals of their people, both as Natives and as citizens of Alaska. In testimony before the Committee, Roy Huhndorf, President of the Cook Inlet Region, Inc., stated:

> We have embraced the corporate form with a good deal of enthusiasm. We have organized to seek business opportunities, to strengthen the corporation, to think through how CIRI can be a successful business entity that can contribute to the lives of its shareholders and the economy of the state * * *. But there is a need for additional Congressional action, even for the Native corporations that appear strong. If we are to negotiate the 1991 transition smoothly, there must be an orderly way for shareholders to make their views known about the future their corporations should take.

There are many other Natives who feel that the corporate structure may not serve the long-term interests of their people. Will Mayo, testifying on behalf of the Tanana Chiefs Conference, Inc., stated:

> Pivotal to [our] concerns is the relative merits and hindrances of the "corporate" organization structure * * *. It was decided that the continuation or termination of the corporate form would be an "option" proposal in the legislation. Those who judged that the corporate form was to be preferred would maintain it through a majority vote of the shareholders * * *. Therefore, while we do not favor the corporate form of organization, we speak in support of

these provisions so Native people will have the option to choose this type of organization if they wish.

H.R. 4162, as reported, would provide, through various amendments to ANCSA, options to Native people in Alaska to determine for themselves if the corporate form meets their needs and, if so, what changes are necessary to achieve those goals or, if it does not, what other form may better serve their needs.

ANCSA now provides that the restrictions on alienation of Native stock will terminate on December 18, 1991. H.R. 4162 amends that provision in two respects. First, it amends section 7(h) of ANCSA to provide that the restrictions on alienation will be extended indefinitely unless terminated by a vote of the stockholders of a corporation. Secondly, as an alternative procedure, H.R. 4162 adds a new section 7a to ANCSA which establishes different provisions for the Bristol Bay Native Corporation, the Aleut Corporation, the Cook Inlet Corporation, Inc., and Koniag, Inc., and Village Corporations within those regions to elect to retain the December 18, 1991 expiration date, but with the option to continue the restriction by a vote of their stockholders.

H.R. 4162 amends section 7(g) of ANCSA to permit Native Corporations to amend their articles of incorporation to permit them to issue Native common stock to Natives born after December 17, 1971; to Natives who were alive on that date and eligible for enrollment, but not enrolled; and to existing Native shareholders over the age of sixty-five.

H.R. 4162 amends ANCSA to permit Native Corporations, by a vote of their stockholders to transfer all or part of the corporation's assets, including land, to transferee entities meeting certain defined qualifications.

Section-by-Section Analysis

SECTION 1

Section 1 cites the Act as the "Alaska Native Claims Settlement Act Amendments of 1986".

SECTION 2

Section 2 contains congressional findings and declarations.

SECTION 3

Subsection (a) makes technical amendments to section 3 of ANCSA which contains definitions.

Subsection (b) amends section 3 of ANCSA by adding definitions of two new phrases, "Native common stock" and "descendants of a Native".

SECTION 4

Section 4 amends subsection (g) of section 7 of ANCSA by rewriting the subsection entirely. An analysis of the new subsection (g) follows:

Paragraph (1) is the existing subsection (g). It required Regional Corporations to issue 100 shares of stock to Natives enrolled to the

region. It is amended only by denominating that stock as "Native common stock".

Paragraph (2) provides that a Regional Corporation, if authorized by an amendment to its articles of incorporation, may issue up to 100 shares of additional Native common stock to Natives born after December 18, 1971; to existing Native shareholders who have attained the age of 65; and to Natives who were eligible for enrollment under section 5 of ANCSA, but who were not so enrolled. The amendment to the articles could, at the option of the existing shareholders, require consideration for such issuance or not as deemed appropriate. In addition, the amendment could impose such terms and conditions on the issuance of the new stock as desired. However, as Native common stock, it would carry with it all the rights and restrictions provided for in section 7(h) of ANCSA.

Paragraph (3), in subparagraph (A), authorizes an amendment to the articles of incorporation of a Regional Corporation to issue additional shares of stock, including Native common stock. However, Native common stock issued under this paragraph would be limited to Natives and would carry the rights and restrictions of Native common stock.

Subparagraph (B) establishes the terms and conditions under which new stock may be issued under this paragraph.

Subparagraph (C) provides that any amendment to the articles authorizing the issuance of stock under this paragraph, other than Native common stock, must specify the maximum number shares of any class or series and the maximum number of votes that may be held by such shares.

Subparagraph (D) provides that sock may not be issued under this paragraph to groups of persons composed only of employees, officers, or directors of the Regional Corporation during the period when restrictions on alienation of Native common stock are in effect.

Subparagraph (E) provides that, if stock issued under this paragraph would cause the outstanding shares of Native common stock to represent less than a majority of the voting power of all stock, the stockholders of the corporation must be expressly so advised in any proxy statement or other informational material provided to them with respect to a vote on an amendment to permit such issuance. It is the intent of this subparagraph that, whatever the law may be with respect to notice to stockholders through proxy statements or otherwise, this notice must be given to the voting stockholders.

Subparagraph (F) prohibits the issuance of stock under this paragraph, other than Native common stock, more than 13 months after the vote authorizing such issuance if, as a result of such issuance, the outstanding shares of Native common stock would represent less than a majority of the voting power of all stock in the corporation. This prohibition is lifted if previous lawful stock issuance under this paragraph had already caused Native common stock to represent less than a majority of voting power or if restrictions on alienation had been removed or had expired.

Subparagraph (G) provides that the ratio for the distribution of funds under subsection (j) and (m) of section 7 of ANCSA, as last

computed prior to the enactment of these amendments, shall not be altered by the issuance of new stock under this paragraph.

Subparagraph (H) provides that new stock issued under this paragraph to non-village stockholders as described in subsection (m) of section 7 of ANCSA shall carry such right to distribution of funds under subsection (m) and (j) of section 7 as may be provided in the amendment to the articles of incorporation authorizing the issuance of the new stock.

Subparagraph (I) provides that common stock issued pursuant to this subsection which carries the same rights and restrictions provided for in section 7(h) or which is issued in substitution for Native common stock shall be deemed to be Native common stock as long as all such rights and restrictions are in effect with respect to such stock.

Paragraph (4) provides that the issuance of additional shares of stock under paragraph (2) and (3) of this subsection shall not affect the division and distribution of revenues under subsection (i) of section 7 of ANCSA.

SECTION 5

Section 5 of H.R. 4162 amends subsection (h) of section 7 of ANCSA by rewriting the subsection entirely. An analysis of the new subsection (h) follows:

Paragraph (1), subparagraph (A), provides that, except as otherwise provided in paragraphs (3) and (4), Native common stock issued under subsection (g) shall carry the right to vote in the affairs of the Regional Corporation, the right to receive dividends or other distributions, and all other rights vested in a stockholder under Alaska law.

Subparagraph (B) provides that, until the restrictions on alienation are removed pursuant to paragraph (2) or expire pursuant to section 7a, Native commons stock and interests therein may not be alienated in any way. In the event that restrictions are removed on any stock under this subparagraph, it is the intent of the Committee that no replacement stock issued shall be subject to any debt incurred nor any other obligation, contractual or otherwise, which would have been prohibited priority to the issuance of such replacement stock.

Subparagraph (C) provides that the restrictions imposed by subparagraph (B) shall not apply to transfers of Native common stock to Natives or descendants of Natives pursuant to a court decree of separation, divorce or child support or by a stockholder who is a member of a professional organization which limits his ability to practice his profession because of holding such stock. It is understood that the restrictions run with the stock and will restrict the stock in the hands of Natives or descendants of Natives acquiring the stock pursuant to this subparagraph.

Subparagraph (D) provides that, except as provided in section 7a, the restrictions imposed by subparagraph (B) shall continue in effect unless terminated pursuant to the provisions of paragraph (2) of subsection 7(h). Under existing law, the restrictions are due to expire on December 18, 1991. The subparagraph extends the restrictions indefinitely except for corporations electing to come

within the provisions of section 7a in which case the December 18, 1991, date would remain in effect.

Paragraph (2), subparagraph (A), provides that, except as provided in subparagraph (F), a Regional Corporation may terminate the restrictions imposed by paragraph (1) pursuant to the procedures established in this paragraph.

Subparagraph (B) provides that, at any time after the enactment of these amendments, a resolution to terminate restrictions on alienation may be adopted by the board of directors of a Regional Corporation either on its own motion or pursuant to a petition of its stockholders under paragraph (6) of this subsection. Such resolution must be submitted to a vote of the corporation stockholders pursuant to the provisions of paragraph (6).

Subparagraph (C) provides that a resolution adopted to terminate restrictions shall establish the time of termination either by setting a date or by describing an event upon which the restriction would terminate.

Subparagraph (D) provides that the approval of a resolution to terminate restrictions shall be considered an amendment to the articles of incorporation for purposes of paragraph (6). Upon the date of termination, all Native common stock previously issued will be deemed canceled and shares of stock of the appropriate class shall be issued to each stockholder, share for share, subject to any restrictions which might be imposed on the replacement stock pursuant to paragraph (7) of this subsection or by an agreement between the corporation and the individual stockholder.

Subparagraph (E) provides that the rejection of a resolution under this paragraph shall not preclude subsequent votes on similar resolutions.

Subparagraph (F) provides that, notwithstanding this paragraph, the board of directors of the Bristol Bay Native Corporation and any Village Corporation in the Bristol Bay region may, within one year of the date of enactment of these amendments, adopt a resolution electing to follow the procedures set out in section 7a. If such a corporation so elects, the provisions of paragraph (2) would not be applicable to that corporation.

Paragraph (3) provides that, upon the death of the holder of Native common stock, such stock shall be transferred pursuant to any last will and testament or under applicable laws of intestate succession. However, if a deceased stockholder has failed to dispose of such stock by a will and if the deceased has no heirs under applicable law who are Natives or descendants of Natives, such stock shall escheat to the corporation. It further provides that a Regional Corporation will have a right to purchase stock if it would be transferred by devise or inheritance to a person who is not a Native or descendant of a Native.

Paragraph (4), subparagraph (A), authorizes a Regional Corporation to amend its articles to permit it to purchase, and, for that purpose only, its stockholders to sell, Native common stock notwithstanding the restrictions on alienation.

Subparagraph (B) provides that payment for such stock may be made out of unreserved or unrestricted earned surplus of the corporation or out of net profits for the fiscal year in which the purchase is being made and for the preceding fiscal year unless the

corporation is unable to pay its debts in the usual course of business.

Subparagraph (C) provides that for the purposes of this paragraph, net profits from exploitation or liquidation of timber resources or subsurface estate may be determined without consideration of depletion of those assets resulting from lapse of time, consumption, liquidation, or exploitation.

Subparagraph (D) provides that shares of Native common stock purchased pursuant to this paragraph shall become non-voting treasury stock or shall be canceled by the corporation as required by law.

Subparagraph (E) provides that the board of directors shall determine the price at which such purchases will be made and that price, if determined in good faith, shall be presumed to be fair. The board is permitted, in determining a fair price, to exclude from the determination the value of lands or interests in lands which the corporation received pursuant to ANCSA which are committed to Native traditional or cultural uses or which are of speculative or unknown value.

Subparagraph (F) provides that all stockholders must be given a fair opportunity to participate in any offer of the corporation to purchase stock.

Paragraph (5) provides that Native common stock transferred through inheritance to a non-Native shall not carry voting rights, but that the articles of incorporation of a Regional Corporation may be amended to permit the restoration of the voting right to such stock if subsequently acquired by a Native or descendant of a Native.

Paragraph (6), subparagraph (A), provides that actions of a Regional Corporation to (1) amend the articles pursuant to subsection (h) or (g) of section 7, (2) transfer assets pursuant to subsection 7b, (3) adopt a resolution pursuant to paragraph 2(C) of subsection 7(h), and (4) adopt a resolution pursuant to subparagraph (B) of this paragraph shall be approved as provided in this paragraph.

Subparagraph (B) provides that the board of directors shall adopt a resolution setting forth any of the proposed actions described in subparagraph (A) and directing that it be submitted to a vote of the stockholders at either the annual meeting of the stockholders or at a special meeting. It provides that one or more of such proposed action may be submitted by such a resolution. It is not the Committee's intent that more than one version of any of the actions described in subparagraph (A) could be so submitted, but, rather, that more than one of each separate action could be submitted for a vote.

Subparagraph (C) provides that written notice explaining the proposal being submitted shall be provided to each stockholder of record not less than fifty or more than sixty days prior to the date of the meeting. Such notice must be delivered by hand or sent by first class mail to the stockholder.

Subparagraph (D) authorizes stockholders of a Regional Corporation to petition the board of directors to adopt and sumit to the vote of the stockholders any of the actions described in subparagraph (A). If the holders of 15% or, in the case of a proposed amendment to terminate restrictions an alienation, 30% of the out-

standing shares on Native common stock petition the board to adopt such a resolution or amendment, the board is required to do so and to submit the propsed action to a vote of the stockholders. The subparagraph provides that State law regulating the solicitation of proxies shall govern the solicitation of signatures on such petition. It also requires the board, if it agrees with the petition, to submit its own or the propent's statement in support of the proposal to the voters. If it is not in agreement, it must submit the proponent's statement and may, if it chooses, submit its own statement in opposition or an alternative proposal or both.

Subparagraph (E) provides that, with respect to a proposed amendment to terminate restrictions on alienation on Native common stock, approval will require an affirmative vote of at least a majority of the outstanding shares of Native common stock. With respect to all other proposed actions described in subparagrah (A), approval requires that at least 51% of the outstanding shares must be voted and the proposal must obtain the affirmative vote of at least a majority of all such votes cast. However, the subparagraph permits the board of directors to establish a quorum or vote requirement for the latter proposals greater than the 51% quorum or majority vote requirement and to provide for a vote by classes of stock.

Subparagraph (F) makes provisions for dissenters' rights with respect to a vote to terminate restrictions. If the board of directors adopts a resolution providing for such rights contemporaneous with a vote on such proposal, stockholders voting for termination may demand and receive payment for their shares if the vote is to continue restrictions. Except as otherwise provided in these amendments, the procedure established by Alaska state law for the exercise of rights of dissenting stockholders shall be followed if a resolution is adopted making such rights available.

Subparagraph (G) provides that the provisions of section 7a(f)(2) and (3), relating to valuation of stock and the form of payment, may be followed with respect to dissenting rights if a resolution under subparagraph (F) is adopted.

Paragraph (7) provides that, if restrictions on alienation of Native common stock are terminated pursuant to this subsection or expire pursuant to section 7a, a Regional Corporation, prior to the effective date of such termination or expiration, my amend its articles to impose any restrictions on the replacement stock required by paragraph 2(D) of this subsection which may be permitted under applicable law. In addition, the paragraph permits the corporation to impose, through amendment of the articles, restrictions denying voting rights to holders of replacement stock who are not Natives or descendants of Natives and granting the corporation, or the corporation and a stockholder's immediate family, the right to purchase, on reasonable terms, the stockholder's replacement stock prior to alienation of such stock, other than by inheritance, to any other party.

SECTION 6

Section 6 of H.R. 4162 amends ANCSA by adding a new section 7a. The new section 7a makes available to the Bristol Bay Native

Corporation, and those Village Corporations within the Bristol Bay regions which decide to come within its ambit, an alternative method for dealing with the question of continuing stock restrictions. In general, this alternative method provides specifically for a mandatory stockholder vote on the key issue of stock restrictions as well as the mandatory recognition of dissenters' rights. This alternative was included at the express request of BBNC, which is concerned that its actions be judged independently in the event of a court challenge under section 10 of ANCSA. The Committee, by acceding to this specific request of BBNC and those Regional Corporations covered by section 9 of this bill, does not in any way express a Committee concern about the constitutionality of the other provisions of these amendments to ANCSA. That issue is covered in a separate part of this report.

An analysis of the new section 7a follows:

Subsection (a) provides that, if the Bristol Bay Native Corporation or any Village Corporation within the Bristol Bay region adopts a resolution as provided in paragraph (2)(F) of subsection 7(h), such corporation may extend restrictions on alienation as provided in this section.

Subsection (b) provides that, within two years after the election described in subsection (a) and, if the quorum requirements under subsection (e) are not met, annually thereafter, the board of directors of such corporation must adopt, and submit to a vote of its stockholders, a resolution to amend the articles of incorporation to extend restrictions on alienation of its Native common stock. The resolution must provide for an extension of not less than 20 nor more than 50 years. The subsection permits, prior to the expiration of any extension period, further extensions as provided in this section.

Subsection (c), paragraph (1), provides that, if a vote on extension is ineffective because of a continuing or repeated lack of a quorum as provided in subsection (e) or if the stockholders defeat a resolution to extend restrictions, the board of directors must adopt and submit to a vote of the stockholders a resolution establishing the date or describing the event upon which restrictions will terminate.

Paragraph (2) provides that, if no such resolution is voted upon and approved, the restrictions will terminate one year from either the date of the vote disapproving the extension or the last date upon which a lack of a quorum existed, as the case may be, or on December 18, 1991, whichever occurs later.

Paragraph (3) provides that, upon the effective date of termination, all Native common stock shall be deemed canceled and shares of stock of the appropriate class shall be issued to each stockholder, share for share, subject only to such restrictions as may be provided in the articles or by any agreement between the corporation and individual stockholders.

Subsection (d), paragraph (1), provides that, notwithstanding Alaska law, except those relating to stockholders' rights of petition and proxy statements and solicitations not inconsistent with this section, amendments to the articles of incorporation authorized by this section or section 7(g) and section 7(h)(4), (5), and (7), a transfer of assets under section 7b, a resolution described in subsection (c) of

this section, or a resolution described in subsection (f)(2) of this section shall be approved as provided in this subsection.

Paragraph (2) provides that the board of directors shall adopt a resolution explaining the proposed action described in paragraph (1) and shall submit it to a vote of the stockholders at the annual, or a special, meeting of the stockholders. One or more of the proposals described in paragraph (1), but not more than one version of each, may be submitted to the stockholders at any one meeting.

Paragraph (3) requires the board to provide written notice explaining the proposal to each stockholder of record not less than 50 nor more than 60 days before the meeting, either personally or by mail.

Subsection (e) provides that any proposal submitted to the stockholders for a vote under this section must be voted upon by at least 51% of the outstanding shares of Native common stock entitled to be voted and must receive the affirmative vote of at least 50% plus one of the shares voted. The subsection would permit the stockholders to require a minimum vote of more than 51% and an affirmative vote of more than 50% plus one or both to approve such resolution.

Subsection (f), paragraph (1), provides that, if the result of a stockholder vote under this section is to extend restrictions or transfer assets pursuant to section 7b, a stockholder who voted against the extension or transfer may demand and receive payment from the corporation for the fair market value of his or her shares. The subsection provides that, unless longer periods of time are authorized by the bylaws of the corporation, the procedure established by Alaska state law for the exercise of dissenters' rights to demand and receive payment shall be followed.

Paragraph (2) authorizes the corporation, concurrent with a vote authorized in subsection (a), to adopt a resolution relating to the valuation of, and method of payment for, the Native common stock in the event dissenters' rights are exercised. The purpose of the Committee in adopting the provisions of this paragraph dealing with dissenters' rights was to provide that the Native stockholders not be given a financial incentive to dispose of their stock.

In furtherance of this purpose, subparagraph (A) provides that the corporation may decide that, in the determination of its fair market value, Native common stock shall be valued as restricted stock, having the same restrictions for the same period made applicable to the stock by the vote which the dissenters lost, thus placing the dissenter on exactly the same economic level as a remaining stockholder.

Similarly, subparagraph (B) authorizes the corporation, for purposes of a fair market value determination, to exclude the value of any land which is committed to Native traditional or cultural uses or which is of speculative or unknown value.

The Committee believes that the provisions of paragraph (2) are justified by the unique circumstances entailed in the decision to be be made by Native corporations regarding continuing stock restrictions, i.e., balancing the interest of the majority stockholders in maintaining a viable corporation against a desire to provide protections for minority stockholders who wish to dispose of their stock. The provisions are designed in a manner which is fair, according

all stockholders equal economic choices, but which also will not jeopardize the existence of the corporation by requiring liquidation value to be paid to dissenters should the majority of stockholders vote to continue restrictions. Regardless of whether a corporation adopts these special rules, the Committee intends that Native common stock shall not be valued on the basis of liquidation value because dissenting stockholders cannot liquidation a corporation.

Subparagraph (C) of paragraph (2) authorizes the corporation to pay dissenting stockholders for the value of their shares through the issuance a non-negotiable note. The subparagraph provides that the note shall be secured by a payment bond issued by an insurance company or financial institution; the deposit in escrow of securities having a fair market value of at least 125% of the face amount of the note; or by lien upon real propoerty interests of the corporation valued at 125% or more of the face amount of the note. However, the lien may not include lands or interests therein which are committed by the corporation to Native traditional or cultural uses and many not include the percentage interest in its timber resources or subsurface estate the revenue from which is subject to distribution to other corporations pursuant to section 7(i) of ANCSA.

Paragraph (3) provides that interest on such notes will be paid semi-annually, beginning on the date of the vote to extend restrictions or transfer assets, at the rate applicable on such date to obligations of the United States having a maturity of one year.

The paragraph also establishes the time for the payment of the principal and undistributed interest. The payment may be made at any time at the call of the corporation or, if not so called, on a date tied to the time the restrictions would have otherwise terminated, or, in the case of a transfer of assets, five years after such transfer.

SECTION 7

Section 7 amends ANCSA by adding a new section 7b providing for the conveyane by a Native Corporation of any or all of its assets, including lands, to a qualified transferee entity. An analysis of the new section follows:

Subsection (a) authorizes any Native Corporation, or the stockholders of a Native Corporation which has been involuntarily dissolved, to convey any or all of its assets, including interests in land, to a qualified transferee entity as provided in this section.

Subsection (b) provides that such conveyance must be accomplished by the adoption of a resolution by the board of directors which must be submitted to a vote of the stockholders as provided in section 7(h)(6) or section 7a, as appropriate. The resolution may or may not provide that consideration shall be paid for such conveyance.

Subsection (c) provides that an entity qualified to accept a conveyance pursuant to this section must (1) be organized pursuant to, or recognized by, State or Federal law; (2) have a membership composed of persons whose interest in the entity is non-transferable; (3) provide membership for all persons owning Native common stock prior to such transfer; and, (4) except as provided in item (3), limit new membership to Natives or descendants of Natives. It is the

Committee's understanding that Native entities organized pursuant to the Act of June 18, 1934, as amended, and traditional Native village councils would meet the qualifications established by this subsection if the item (3) requirement is satisfied under the authority conferred by subsection (d) of this section.

Subsection (d) provides that, notwithstanding any Federal or State law, a qualified transferee entity under subsection (c) shall have authority to (1), by a vote of its members, limit its membership to Natives or descendants of Natives and, solely for the purpose of meeting the requirements of subsection (c), admit non-Natives who own shares of Native common stock prior to the date of a conveyance of assets; (2) distribute cash and other assets to its members except that it may not convey fee title to lands or interests in land unless permitted or required by section 14(c) or 21(j) of ANCSA; and (3) exchange lands or interests in lands under section 22(f) of ANCSA or section 1302(h) of the Alaska National Interests Lands Conservation Act.

Subsection (e) provides that the provisions of subsections (d) and (e) of section 21 of ANCSA will continue to apply to lands or interests in lands transfered pursuant to this section to a qualified transferee entity.

Subsection (f), paragraph (1), provides that revenues derived by a qualified transferee entity from lands transferred pursuant to this section shall remain subject to the revenue sharing provisions of section 7(i) of ANCSA to the same extent as if such transfer had not occurred.

Paragraph (2) provides that a Regional Corporation shall not transfer assets subject to section 7(i) to more than one qualified transferee entity. Prior to receiving a transfer of such assets, the transferee entity must agree, in writing, that it will be bound by the agreement entered into on June 29, 1982, between the parties to *Aleut Corporation et al* v. *Arctic Slope Regional Corporation* and that it will waive its sovereign immunity, if any, with respect to claims arising under section 7(i) or this section.

Paragraph (3) provides that the Regional Corporation making a conveyance under this section or, in the case of its dissolutions, a single entity designated by its stockholders or the U.S. District Court, shall be responsible for administering the provisions of section 7(i) and the 1982 agreement with respect to assets transferred under this section.

Paragraph (4) provides that, notwithstanding the conveyance of an asset subject to 7(i), the asset shall be security for the payment by the Regional Corporation or its successor entity of all the revenue it is obligated to distribute to other Regional Corporations under section 7(i).

It is the intent of the Committee that the obligations and rights with respect to section 7(i) established by the original ANCSA and the 1982 agreement shall not be, in any way, altered, affected or evaded by a transfer of assets under this section.

Subsection (g), paragraph (1) provides that, if a resolution conveying assets is adopted pursuant to this section, any stockholder voting against such transfer may demand and receive payment from the corporation for his or her shares, but only if, concurrent

with such vote, the stockholders of the Native Corporation adopt a resolution conferring that right.

Paragraph (2) provides that the procedures established by Alaska law for dissenting shareholders shall be followed if that right is conferred by a resolution adopted under paragraph (1).

Paragraph (3) provides that, notwithstanding state law, a resolution adopted under paragraph (1) may provide for valuation of stock and form of payment as provided in section 7a(f) (2) and (3) of this Act.

SECTION 8

Section 8 adds a new section 7c to ANCSA relating to the effect of these amendments upon the governing powers of any Alaska Native entity. An analysis follows:

Section 7c provides that nothing in these amendments shall be deemed to affect in any way the scope of the governing powers, if any, of any Alaska Native village entity, including entities organized under the act of June 18, 1934, as amended, or traditional councils.

Section 8, adding this new section 7c to ANCSA, was one of the most troubling aspects of H.R. 4162. As introduced, H.R. 4162 provided that nothing in ANCSA, as already amended, or in these further amendments was to be deemed an enlargement or diminution of any existing governmental powers of Alaska Native Village entities. The amendment in the nature of a substitute adopted by the Committee changed this provision to make the disclaimer applicable only to the amendments to ANCSA contained in the bill as reported. While the Committee adopted that language in view of the controversy associated with the provision, it does not intend to imply by that action that ANCSA may have been intended to have an affect on any governmental powers of Alaska Native Village entities.

ANCSA was an Indian land claims settlement act. It was not, at the time, the intent of Congress to deal in any way with the issue of governmental authority of villages in Alaska. If village entities had tribal governing powers under existing law prior to the passage of ANCSA, ANCSA did not effect them. If they did not have such powers, ANCSA did not bestow them. It is the intent of the Committee that this is an issue which should be left to the courts in interpreting applicable law.

SECTION 9

Section 9 adds a new section 7d to ANCSA. An analysis of that section follows:

Section 7d provides that the Aleut Corporation, the Cook Inlet Corporation, Inc., and Koniag, Inc., and any village Corporation within the Aleut and Cook Inlet regions may, by a vote of its board of directors within one year after the effective date of these amendments, elect to follow the special provision established for the Bristol Bay region in section 7a of ANCSA, as amended by this bill.

SECTION 10

Section 10 of H.R. 4126 amends subsection (c) of section 8 of ANCSA relating to village and urban corporations and Native groups. An analysis of that subsection, as amended, follows:

Paragraph (1) provides that the provisions of subsections (g), (h), and (o) and section 7a of ANCSA, as amended, shall apply in all respects to Village Corporations, Urban Corporations, and Native Groups except that the requirement for the submission of audits to Congress shall not be applicable to them and, except as provided in section 7a, restrictions on alienation of Native common stock shall continue after December 18, 1991.

Paragraph (2) provides that the provisions of section 7(h) (2) and (6) or section 7a, as the case may be, relating to the removal or extension of restictions on alienation of Native common stock shall be applicable to Village and Urban Corporations and Native Groups. However, it provides that, with respect to actions to remove restrictions under section 7, only one such vote can be held prior to December 18, 1991, and only one annually thereafter. With respect to action to extend restrictions under section 7a, votes shall be held as provided in subsection (b)(1) of section 7a.

SECTION 11

Section 11 amends section 10 of ANCSA by adding a new subsection (c). An analysis of that subsection follows:

Paragraph (1) provides that the United States Distirct Court for the District of Alaska shall be vested with exclusive jurisdiction over any suit challenging the constitutionality of any provision of these amendments and that such suit shall be before a three-judge court with a right of direct appeal to the Supreme Court of the United States.

Paragraph (2) provides that no monetary award shall be entered against the United States as relief from the finding that any such provision violates the 5th Amendment to the Constitution.

SECTION 12

Section 12 of H.R. 4162 amends section 14 of ANCSA by adding a new subsection (i). An analysis of that new subsection follows:

Paragraph (1) permits a Regional Corporation to convey any subsurface estate of such corporation to any village entity which acquired or currently owns the surface estate pursuant to this Act, as amended.

Paragraph (2) provides that the conveying Regional Corporation shall continue to receive any revenue derived from such conveyed subsurface interest which it would be entitled to receive under section 7(i) and that any remaining revenue from such interests which would be subject to section 7(i) shall be distributed as provided by that section.

Paragraph (3) provides that conveyances under this subsection shall be subject to the provisions of section 7b as if the village entity was a qualified transferee entity. It also provides that the conveying documents together with copies of section 7b and this

subsection shall be recorded by the Regional Corporation in the land records of the appropriate recording district.

Paragraph (4) prohibits a village entity receiving a conveyance under this subsection from further transferring any part of the conveyed subsurface without the consent of the Regional Corporation making the original conveyance.

SECTION 13

Section 13 of H.R. 4162 amends paragraph (1) of subsection 21(d) of ANCSA. An analysis of that paragraph, as amended, follows:

Subparagraph (A) provides that lands conveyed to Native individuals or entities under ANCSA shall, from the date of that conveyance, be immune from certain legal processes as long as such lands are not developed or leased to third parties or are used solely for purposes of exploration. These processes include adverse possession and similar claims; real property taxes; judgments resulting from bankruptcy and similar laws; judgments in any action at law or in equity to recover sums owed or penalties incurred by any Native Corporation or Group or their representatives, unless such immunity is waived in a contract executed prior to the commencement of such action; and involuntary dissolution.

Subparagraph (B) provides that, for purposes of this paragraph, lands shall not be considered as developed as a result of improvements made to the land to further the subsistence or other Native customary or traditional uses of such land.

Subparagraph (C) provides that the immunities made available by this paragraph shall be in addition to those immunities or other benefits made available under the Alaska National Interest Lands Conservation Act, but shall not apply to judgments or arbitration awards arising out of claims under section 7(i) of ANCSA.

Subparagraph (D) provides that lands to which this paragraph applies and lands conveyed pursuant to section 7b shall be subject to condemnation for public purposes under applicable State law. The addition of this language provides explicit authority for what the Committee understands has been the case legally since the passage of ANCSA. The Committee intends that the condemnation authority be used solely for valid public purposes and only if just compensation, taking into consideration the real value of the condemned lands to the Native individual or entity, is provided for such taking.

Paragraph (E) provides that no trustee, receiver, or custodian, except for a trustee under section 14(c)(3) of ANCSA, vested with any interest of a Native corporation or group may assign or lease to a third party lands subject to this paragraph which have not been developed or leased or commence development or use of the land for other than exploration purposes nor may they convey title to such lands to a third party except pursuant to a judgment or arbitration award regarding revenue under section 7(i).

While mindful of the need to protect Native corporations from the involuntary loss of undeveloped lands, most of which are used for subsistence purposes, the Committee does not intend to interfere with normal business relations. Thus, the immunity under the Bankruptcy Code will not affect secured creditors, whose lien will

take the land out of the Land Bank, but rather will curtail only the interests of unsecured creditors, who did not look to the land as a source of repayment in the first place. In addition, the Native corporation by contract may waive its immunity from judgment execution upon the land arising out of judicial proceedings, if such contract is executed before the court proceedings are commenced. The Committee believes that these provisions will enable the Native corporations freely and fully to engage in commercial transactions with other parties, giving assurance to such parties that they are not taking undue financial risks, yet at the same time the law will protect from involuntary loss lands which are not put to commercial use.

In view of the lack of progress of land bank agreements under existing authorities, the Committee has chosen to adopt these statutory protections in addition to existing elective land bank authorities.

SECTION 14

Section 14 of H.R. 4162 amends subsection (f) of section 21 of ANCSA, which provides that stock of Regional and Village Corporations shall be exempt from estate taxes until January 1, 1991, by changing the period of exemption to reflect the amendments relating to stock restriction contained in section 7(h) and 7a of ANCSA as amended by this bill.

SECTION 15

Section 15 amends section 27 of ANCSA by providing that the provisions of ANCSA, as amended, are severable and that the invalidation of any of its provisions shall not affect the validity of the others.

SECTION 16

Section 16 of H.R. 4162 amends section 28 of ANCSA relating to the exemption of Native Corporations from certain Federal securities laws. While the section is extensively redrafted, the only substantive change is to reflect the impact of these amendments upon the existing December 18, 1991, date for expiration of the restrictions on alienation.

SECTION 17

Section 17 amends section 29 of ANCSA by adding two new subsections. An analysis of those new subsections follows:

Subsection (c) provides that various benefits or payments received by Native individuals or households from Native Corporations or Groups organized under ANCSA shall not be considered as a resource or otherwise utilized in determining eligibility for certain Federal programs or benefits.

Subsection (d) provides that, until such time as Native ownership of a Native Corporation organized under ANCSA represents less than 51% of the ownership, such corporations shall be deemed a minority owned corporation for purposes of Federal law.

SECTION 18

Section 18 makes a conforming amendment to subsection (b) of section 30, relating to merger of Native Corporations, to reflect the change made by these amendments upon the time of expiration of the restrictions on alienation of Native common stock.

CONSTITUTIONAL ANALYSIS

In addition to the concerns expressed by the Bristol Bay Native Corporation in requesting the special provisions of section 7a, the Committee has been informally advised of other concerns about the constitutionality of certain provisions of H.R. 4162, as reported by the Committee.

The Committee is satisfied that, in the exercise of its plenary power over Indian affairs under the Commerce clause of the Constitution, it has power to deal with the affairs and property of Alaska Natives as proposed in this legislation. The Committee is aware that the Supreme Court has held, in reference to the plenary power, that "The power of Congress over Indian affairs may be of a plenary nature; but it is not absolute." *United States* v. *Alcea Band of Tillamooks*, 329 U.S. 40, 54 (1946). But that power was further defined by the Court in *Morton* v. *Mancari*, 417 U.S. 535 (1974), where it stated:

> Resolution of the instant issue turns on the unique legal status of Indian tribes under Federal law and upon the plenary power of Congress, based on a history of treaties and the assumption of a "guardian-ward" status, to legislate on behalf of Federally-recognized Indian tribes. The plenary power of Congress to deal with these special problems of Indians is drawn both explicitly and implicitly from the constitution itself * * *. As long as the special treatment can be tied rationally to the fulfillment of Congress' unique obligation toward Indians, such legislative judgment will not be disturbed.

The Alaska Native Claims Settlement Act, as evidenced by the title, was passed by Congress to extinguish the aboriginal land claims of Native entities in Alaska and to settle those claims by the confirmation of Native title to approximately 44,000,000 acres of land and the provision of nearly a billion dollars of monetary award for the extinguishment.

While, as already noted, Congress adopted a novel approach for the Native administration and implementation of the settlement terms, the language of ANCSA makes it clear that it did not terminate the "guardian-ward" status of Alaska Natives nor abolish Congress' unique obligation toward them. The numerous limitations placed upon the corporate entities and their funds and lands, the restriction on alienation of the stock, and the special provisions made for the corporate entities make clear that Congress intended to retain its power to deal with the affairs and property of the Natives. This is reinforced by the provisions of Section 23 of ANCSA which required the Secretary of the Interior to submit annual reports to the Congress until 1984 and the requirement that the Secretary submit, through the President, a report at the beginning of

the first session of Congress in 1985 on "the status of Natives and Native groups in Alaska, and a summary of actions taken under this Act, together with such recommendations as may be appropriate." The inclusion of this provision can have no other meaning than that Congress intended to reserve the right to review the implementation and impact of the Act and to make such modifications as it deemed in the best interest of the Natives.

In the similar case of *Chippewa Indians* v. *United States* 307 U.S.C. 1 (1939), the continuing power of Congress over Chippewa funds was challenged on the theory that, by an 1889 Act of Congress, the tribe had been dissolved and the funds individualized, and that Congress had no right to expend the funds for various tribal purposes. In rejecting his argument, the Supreme Court said:

> (The 1889 Act) exhibits a purpose gradually to emancipate the Indians and to bring about a status comparable to that of citizens of the United States. But it is plain that, in the interim, Congress did not intend to surrender its guardianship over the Indians or treat them otherwise than as tribal Indians * * *. Moreover, an examination of the Act of 1889 discloses that it is not cast in form of an agreement; and we may not assume that Congress abandoned its guardianship of the tribe or the lands and entered into a formal trust agreement with the Indians, in the absence of a clear expression of that intent * * *. We hold that the Act did not tie the hands of the Congress so that it could not depart from the plan envisaged therein, in the use of tribal property for the benefit of its Indian wards.

The testimony taken by the Committee on H.R. 4162 persuaded the Committee that the modifications of ANCSA contained in the bill are in the best interests of the Natives. Indeed, it was the consensus of the Native community of Alaska that at least these changes were necessary for their long-term benefit.

Beyond that, H.R. 4162, as reported, does not represent a unilateral exercise by Congress of its plenary power over Indian Affairs to modify the experimental scheme it adopted in ANCSA, although it might have done so. Rather, the bill authorizes the desired changes to be made and confers power on the Native Corporations, notwithstanding inconsistent Federal or state law, to adopt those changes through appropriate action of the boards of directors or stockholders. In addition, the bill evidences the Committee's concern for the interests of dissenting stockholders by either requiring or permitting the Corporations to adopt provisions safeguarding their interests.

Cost and Budget Act Compliance

Enactment of H.R. 4162 will result in no significant additional cost to the United States. The cost analysis prepared by the Congressional Budget Office, which the Committee adopts as its own, follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 15, 1986.

Hon. MORRIS K. UDALL,
Chairman, Committee on Interior and Insular Affairs, House of Representatives, Longworth House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 4162, the Alaska Native Claims Settlement Amendments of 1986, as ordered reported by the House Committee on Interior and Insular Affairs, June 25, 1986.

H.R. 4162 would amend the Alaska Native Claims Settlement Act of 1971 to provide Alaska Natives with certain options for the continued ownership of lands and corporate shares received pursuant to the act. Based on our review, we estimate that enactment of the bill will result in no significant additional costs to the federal government and will not affect the budgets of state and local governments.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

RUDOLPH G. PENNER, *Director.*

INFLATIONARY IMPACT STATEMENT

Enactment of H.R. 4162 will have no inflationary impact.

OVERSIGHT STATEMENT

No specific oversight activities were undertaken by the Committee and no recommendations were submitted to the Committee pursuant to rule X, clause 2(b)2.

COMMITTEE RECOMMENDATION

The Committee on Interior and Insular Affairs, by voice vote, recommends approval of this bill, as amended, by the House of Representatives.

DEPARTMENTAL REPORT

The Committee requested a report from the Department of the Interior by letter of March 20, 1986. No report was received as of the date of the filing of this report.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

ALASKA NATIVE CLAIMS SETTLEMENT ACT

* * * * * * *

SEC. 3. For the purposes of this Act, the term—

* * * * * * *

(h) "Person" means any individual, *group,* firm, corporation, association, or partnership;

* * * * * * *

(k) "Fund" means the Alaska Native Fund in the Treasury of the United States established by section 6; [and]

(l) "Planning Commission" means the Joint Federal-State Land Use Planning Commission established by section 17[.];

(m) "Native Corporation" means any Regional Corporation, any Village Corporation, any Urban Corporation, and any Native Group[.];

(n) "Native common stock" means the stock of a Native Corporation issued pursuant to subsection (g) of section 7 which carries with it the rights and restrictions provided for in paragraph (1) of subsection 7(h); and

(o) "descendant of a Native" means a lineal descendant of a Native or of an individual who would have been a Native if he or she were alive on December 18, 1971, or an adoptee of a Native or descendant of a Native whose adoption is recognized at law or in equity.

* * * * * * *

SEC. 7. (a) * * *

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[(g) The Regional Corporation shall be authorized to issue such number of shares of common stock, divided into such classes of shares as may be specified in the articles of incorporation to reflect the provisions of this Act, as may be needed to issue one hundred shares of stock to each Native enrolled in the region pursuant to section 5.

[(h)(1) Except as otherwise provided in paragraph (2) of this subsection, stock issued pursuant to subsection (g) shall carry a right to vote in elections for the board of directors and on such other questions as properly may be presented to stockholders, shall permit the holder to receive dividends or other distribution from the Regional Corporation, and shall vest in the holder all rights of a stockholder in a business corporation organized under the laws of the State of Alaska, except that for a period of twenty years after the date of enactment of this Act the stock, inchoate rights thereto, and any dividends paid or distributions made with respect thereto may not be sold, pledged, subjected to a lien or judgment execution, assigned in present or future, or otherwise alienated: Provided, That such limitation shall not apply to transfers of stock pursuant to a court decree of separation, divorce or child support.

[(2) Upon the death of any stockholder, ownership of such stock shall be transferred in accordance with his last will and testament or under the applicable laws of intestacy, except that (A) during the twenty-year period after the date of enactment of this Act such stock shall carry voting rights only if the holder thereof through inheritance also is a Native, and (B), in the event the deceased stockholder fails to dispose of his stock by will and has no heirs

under the applicable law of intestacy, such stock shall escheat to the Regional Corporation.

[(3)(A) On December 18, 1991, all stocks previously issued shall be deemed to be canceled, and shares of stock of the appropriate class shall be issued to each stockholder share for share subject only to such restrictions as may be provided by the articles of incorporation of the corporation, or agreements between corporations and individual shareholders.

[(B) If adopted by December 18, 1991, restrictions provided by amendment to the articles of incorporation may include, in addition to any other legally permissable restrictions—

[(i) the denial of voting rights to any holder of stock who is not a Native, or a descendant of a Native, and

[(ii) the granting to the corporation, or to the corporation and a stockholder's immediate family, on reasonable terms, the first right to purchase a stockholder's stock (whether issued before or after the adoption of the restriction) prior to the sale or transfer of such stock (other than a transfer by inheritance) to any other of such party, including a transfer in satisfaction of a lien, writ of attachment, judgment execution, pledge, or other encumbrance.

[(C) Notwithstanding any provision of Alaska law to the contrary—

[(i) any amendment to the articles of incorporation of a regional corporation to provide for any of the restrictions specified in clause (i) or (ii) of subparagraph (B) shall be approved if such amendment receives the affirmative vote of the holders of a majority of the outstanding shares entitled to be voted of the corporation, and

[(ii) any amendment to the articles of incorporation of a Native Corporation which would grant voting rights to stockholders who were previously denied such voting rights shall be approved only if such amendment receives, in addition to any affirmative vote otherwise required, a like affirmative vote of the holders of shares entitled to be voted under the provisions of the articles of incorporation.]

(g)(1) The Regional Corporation shall be authorized to issue such number of shares of Native common stock, divided into such classes of shares as may be specified in the articles of incorporation to reflect the provisions of this Act, as may be needed to issue one hundred shares of Native common stock to each Native enrolled in the region pursuant to section 5 of this Act.

(2) Notwithstanding any other law, a Regional Corporation, if authorized by an amendment to its articles of incorporation, may issue up to one hundred shares of additional Native common stock to—

(A) Natives born after December 18, 1971;

(B) Natives who have attained the age of sixty-five; and

(C) Natives who were eligible for enrollment pursuant to section 5, but who were not so enrolled;

for no consideration or for such consideration and upon such terms and conditions as may be specified in the articles of incorporation or by a resolution of the board of directors pursuant to authority expressly vested in it by the articles of incorporation.

(3)(A) Notwithstanding any other provision of this Act and in addition to any other existing authority, any Regional Corporation, after the date of enactment of this paragraph, may amend its articles of incorporation to authorize the issuance of additional shares of stock as provided in this paragraph.

(B) Such shares of stock may be—

(i) divided into classes and series within classes, with preferences, limitations, and relative rights, including, without limitation, dividend rights, voting rights, liquidation preferences, and rights to share in distributions made to stockholders under subsections (j) and (m) of this section;

(ii) subject to alienability restrictions not in excess of the restrictions provided for in paragraph (1) of section (h) of this section;

(iii) restricted in issuance to—

(a) Natives who have reached the age of sixty-five; or

(b) any other identifiable group of Natives, where such group is defined in terms of general applicability and, except as provided in subparagraph (H) of this paragraph, not in any way by reference to place of residence, family, or position as an officer, director, or employee of a Native Corporation other than the issuing Corporation; and

(iv) issued as a dividend or other distribution upon outstanding shares of stock or for such consideration as may be permitted by law;

as may be provided in the articles of incorporation or an amendment thereto.

(C) Any amendment to the articles of incorporation of a Regional Corporation which permits the issuance of classes or series of stock other than Native common stock shall specify the maximum number of shares of any such class or series and the maximum number votes that may be held by shares of such class or series.

(D) During any period in which the restrictions on alienation of Native common stock imposed by paragraph (1) of section 7(h) are in effect, no stock may be issued under this paragraph to a group of individuals composed only of employees, officers or directors of the Regional Corporation.

(E) If any amendment to the articles of incorporation permits the issuance of classes or series of stock which, when issued, singly or in combination, may cause the outstanding shares of Native common stock to represent less than a majority of the voting power of all stock in the Regional Corporation, the stockholders of such corporation shall be expressly so advised in the proxy statement or other informational material distributed in advance of their vote upon the amendment.

(F) In no event may shares of stock other than Native common stock be issued more than thirteen months after the date of the stockholder vote authorizing the issuance of such stock if, as a result of the issuance of such stock, the outstanding shares of Native common stock will represent less than a majority of the voting power of all stock in the Regional Corporation. The restriction of this subparagraph shall be of no further force and effect if shares of stock previously have been lawfully issued pursuant to

this paragraph which have caused the shares of the Native common stock to represent less than a majority of the voting power of all stocks in the Regional Corporation or if the restrictions upon alienation of Native common stock provided for in paragraph (1) of section 7(h) have expires under section 7a or have been terminated under section 7(h) by vote of the stockholders.

(G) Notwithstanding the issuance of additional shares of Native common stock or new classes or series of stock pursuant to this paragraph, the Regional Corporation shall continue to apply the ratio last computed under subsection (m) of this section before the date of enactment of this paragraph for purposes of distributing funds under subsections (j) and (m) of this section.

(H) If shares of different classes or series have been issued pursuant to this paragraph to non-village stockholders as described in subsection (m), distributions payable under subsection (j) and (m) of this section shall be made with respect to such classes or series in accordance with the rights, if any, of each class or series in such distributions as provided in the articles of incorporation or an amendment thereto and, if so provided, the right to share in such distributions may be established as a right or other security separate from any other shares issued to such non-village stockholders.

(I) Common stock issued pursuant to this subsection which carries the same rights and restrictions provided for in section 7(h) or which is issued in substitution for Native common stock shall be deemed to be Native common stock as long as all such rights and restrictions are in effect with respect thereto.

(4) The issuance of additional shares of Native common stock or other stock pursuant to paragraphs (2) and (3) of this subsection shall have no effect on the division and distribution of revenues pursuant to subsection (i) of this section.

(h)(1)(A) Except as otherwise provided herein and in paragraphs (3) and (4) of this subsection, Native common stock of a Regional Corporation issued pursuant to subsection (g) of this section shall—

(i) carry a right to vote in elections for the board of directors and on such other questions as properly may be presented stockholders;

(ii) permit the holder to receive dividends or other distributions from the Regional Corporation; and

(iii) vest in the holder all rights of a stockholder in a business corporation organized under the laws of the State of Alaska.

(B) Until the termination of the such restrictions by the stockholders under paragraph (2) of this subsection or pursuant to section 7a, Native common stock, inchoate rights thereto, and any dividends paid or distributions made with respect thereto, may not be—

(i) sold;

(ii) pledged;

(iii) subject to a lien or judgment execution;

(iv) assigned in present or future;

(v) treated as an asset in a bankruptcy estate; or

(vi) otherwise alienated.

(C) The limitations contained in subparagraph (B) of this paragraph shall not apply to transfers of Native common stock if such transfers are made to Natives or descendants of Natives pursuant to

a court decree of separation, divorce or child support or by a stockholder who is a member of a professional organization, association, or board which limits the ability of that stockholder to practice his or her profession because of holding stock issued under this section.

(D) Except as provided in section 7a, the restrictions on alienation of Native common stock provided in this paragraph shall remain in effect until such time as the stockholders of a Regional Corporation vote to terminate such restrictions as provided in paragraph (2) of this subsection.

(2)(A) Except as provided in subparagraph (F) of this paragraph, a Regional Corporation may terminate the restrictions on alienation imposed on its Native common stock by paragraph (1) of this subsection as provided in this paragraph.

(B) At any time after the date of enactment of this paragraph, a resolution to terminate such restrictions may be adopted by the board of directors on its own motion or pursuant to a stockholder's petition as provided in paragraph (6)(D) of this subsection. A resolution of the board of directors of a Regional Corporation to terminate such restrictions shall be submitted to a vote of the stockholders in accordance with the procedures set forth in paragraph (6) of this subsection.

(C) A resolution to terminate such restrictions adopted pursuant to this paragraph shall make provisions for the time of termination, either by the establishment of the date certain or the description of a specific event upon which the restrictions shall terminate.

(D) The approval of a resolution under this paragraph shall be considered to be an amendment to the articles of incorporation of the Regional Corporation for the purposes of paragraph (6) of this subsection. On the date of termination as established in such resolution, all Native common stock previously issued shall be deemed canceled and shares of stock of the appropriate class shall be issued to each holder of Native common stock, share for share, subject only to such restrictions as may be provided in an amendment to the articles of incorporation adopted pursuant to paragraph (7) of this subsection or in agreements between the corporation and the individual stockholders.

(E) The rejection of a resolution adopted pursuant to this paragraph by the stockholders of a Regional Corporation shall not preclude votes on subsequent resolutions adopted and submitted to a vote pursuant to this paragraph.

(F) Notwithstanding the provisions of this paragraph, if the board of directors of the Bristol Bay Native Corporation or any Village Corporation in the Bristol Bay region adopts, within one year of the date of enactment of this paragraph shall not be applicable to such corporation.

(3)(A) Upon the death of any holder of Native common stock, ownership of such stock shall be transferred in accordance with the last will and testament of such holder or under applicable laws of intestate succession, except that, in the event the deceased stockholder fails to dispose of all of his or her Native common stock by will and if such stockholder has no heirs under applicable laws of intestacy who are Natives or descendants of Natives, such Native common stock shall escheat to the appropriate Regional Corporation.

(B) In the event that stock would be transferred by devise or inheritance to a person not a Native or a descendant of a Native, the Regional Corporation shall have the right to purchase such stock for its fair market value.

(4)(A) Notwithstanding the restrictions on alienation imposed by paragraph (1) of this subsection, any Regional Corporation is hereby authorized to amend its articles of incorporation to permit it to purchase and, for that purpose, its stockholders to sell, any or all of its Native Common stock then issued and outstanding.

(B) Payment for such stock shall be made out of—

(i) unreserved or unrestricted earned surplus of the corporation; or

(ii) net profits for the fiscal year in which the purchase is being made and for the preceding fiscal year, except when the corporation is unable to pay its debts as they became due in the usual course of business.

(C) For the purpose of this paragraph, net profits derived from the exploitation of liquidation of timber resources or subsurface estate may be determined without consideration of depletion of those assets resulting from lapse of time, consumption, liquidation, or exploitation.

(D) Shares of stock purchased pursuant to this paragraph shall become non-voting treasury stock or may be canceled by the Regional Corporation in accordance with law.

(E) In the case of each purchase of Native common stock pursuant to this paragraph, the board of directors shall determine a price at which such purchase will be made. Such price, if determined in good faith, shall conclusively be presumed to be fair. In determining such price, the board of directors, at its option, may exclude from such determination the value of the land or any interest therein received by the Regional Corporation pursuant to this Act which is committed by the corporation to Native traditional or cultural uses or is of speculative or unknown value on the date such determination is made.

(F) With respect to any purchase under this paragraph, all holders of such Regional Corporation's Native common stock shall be given a fair opportunity to participate in any offer by the corporation to purchase shares of its Native common stock on the same basis as is made available to any holder of such stock.

(5) Native common stock transferred through inheritance to a person who is not a Native shall not carry voting rights. The lapse of the right to vote in a holder of Native common stock upon a transfer by inheritance or otherwise may be restored by the adoption of an amendment to the articles of incorporation, but only is such shares of stock are held by a Native or a descendant of a Native.

(6)(A) Notwithstanding any provision of Alaska law, other than those which relate to proxy statements or solicitations which are not inconsistent with this paragraph, and except as provided in section 7a of this Act,—

(i) any amendment to the articles of incorporation of a Regional Corporation authorized by this subsection or subsection (g) of this section;

(ii) a transfer of assets made pursuant to section 7b;

(iii) a resolution described in paragraph 2(C) of this subsection; or

(iv) a resolution described in paragraph (B) of this paragraph; shall be approved as provided in this paragraph.

(B) The board of directors shall adopt a resolution setting forth the proposal and directing that it be submitted to a vote at the annual, or a special meeting of the stockholders. One or more such amendments or resolutions may be submitted to the stockholders and voted upon at one meeting.

(C) A written or printed notice, setting forth the proposal or summary of the changes to be effected, or the proxy statement and related proxy material if required under applicable law, shall be delivered by hand or sent by first class mail to each stockholder of record entitled to vote not less than fifty nor more than sixty days before the date of the meeting at the address of such stockholder as it appears on the records of the corporation.

(D) With respect to any amendment or resolution described in subparagraph (A) of this paragraph, if the holders of at least fifteen per cent or, in the case of an amendment to terminate restrictions on the alienability of Native common stock, one-third of the outstanding shares of Native common stock entitled to be voted petition the board of directors to adopt and submit such amendment or resolution to the vote of the stockholder, the board of directors shall adopt a resolution to that effect and submit it to the stockholders as provided in this paragraph. The procedural and disclosure requirement pertaining to the solicitation of proxies under State law shall govern solicitation of signatures on any such petition. If the petition meets the aforementioned standards and if—

(i) the board of directors agrees with such petition, it shall submit the resolution and either the proponent's statement or its own statement in support of the resolution to the stockholders for a vote; or

(ii) the board of directors disagrees with the petition for any reason, it shall submit the resolution and the proponent's statement to the stockholders and may, at its discretion, submit an opposing statement and/or an alternative resolution.

(E)(i) Any amendment to the articles of incorporation that would have the effect of removing the restrictions on alienation of Native common stock provided in paragraph (1) of this subsection shall be approved if such amendment receives the affirmative vote of at least a majority of the outstanding shares of Native common stock entitled to vote on such amendment.

(ii) Any other amendment or resolution described in subparagraph (A) of this paragraph shall be approved—

(a) if voted upon by at least fifty-one percent of the votes represented by the capital stock of the Regional Corporation entitled to be voted on such amendment or resolution; and

(b) if such amendment or resolution receives the affirmative vote of at least a majority of all votes cast, subject to the right of the board of directors of the Regional Corporation to provide a quorum or vote requirements greater than subclause (a) or (b) of this clause, or both, and to the right of the Regional Corporation in its articles of incorporation to provide a vote by classes of stock for all or any of such actions.

(F) If the result of a stockholder vote under this paragraph is the continuation of the restrictions against alienation of Native common stock, a stockholder who voted in favor of termination of the restriction may demand and receive payment from the corporation for all of his or her shares, but only if, contemporaneously with such vote, the stockholders approve a resolution providing for such right. The procedure established by Alaska law for the exercise of the right of a dissenting stockholder shall be followed, if such right is made available pursuant to this subparagraph.

(G) A resolution adopted pursuant to subparagraph (F) of this paragraph may provide that Native common stock shall be valued on the basis set forth in section 7a(f)(2) or that the form of payment to dissenting stockholders shall be as provided in section 7a(f)(3).

(7) Notwithstanding a stockholder vote to terminate restrictions on alienation of Native common stock under paragraph (2) of this subsection or the expiration of such restrictions pursuant to section 7a, a Regional Corporation, prior to the effective date of such termination, may amend its articles of incorporation to impose any restriction upon the replacement common stock issued pursuant to paragraph 2(D) of this subsection permitted under applicable law as well as restrictions providing for—

(A) the denial of voting rights to any holder of such replacement common stock who is not a Native or descendant of a Native; and

(B) the granting to the corporation, or to the corporation and the stockholder's immediate family, on reasonable terms, the first right to purchase a stockholder's replacement common stock prior to the sale or transfer of such stock, other than a transfer by inheritance, to any other party, including a transfer in satisfaction of a lien, writ of attachment, judgment execution, pledge, or other encumbrance.

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SEC. 7a. (a) If the Bristol Bay Native Corporation or any Village Corporation located in the Bristol Bay region adopts a resolution as provided in paragraph (2)(F) of subsection 7(h), such corporation may extend the restrictions on alienation of Native common stock as provided in this section.

(b)(1) Within two years after the election under paragraph (2)(F) of section 7(h) and, if the quorum requirement specified in subsection (e) of this section is not satisfied, annually thereafter, the board of directors of such corporation shall adopt, and submit to a vote of its stockholders, a resolution to amend its articles of incorporation to extend the restrictions on alienation of its Native common stock.

(2) Such resolution shall provide for an extension of the restrictions for a period of not less than twenty nor more than fifty years.

(3) If a resolution under paragraph (1) of this subsection is adopted, such corporation may, prior to the expiration of the period of extension or any successor extension period, further extend the restrictions under the provisions of this section.

(c)(1) If any vote conducted pursuant to subsection (b) of this section is ineffective because of a continuing or repeated lack of quorum as provided in subsection (e) of this section or if the holders of Native common stock defeat a resolution to continue restrictions

on alienation, the board of directors shall adopt, and submit to the vote of the stockholders, a resolution which establishes the date or describes the specific event upon which the restrictions shall terminate.

(2) If no such resolution is voted upon and approved, the restrictions shall terminate one year from either the date of the vote disapproving the resolution to extend such restriction or the last date on which a lack of a quorum existed, as the case may be, or on December 18, 1991, whichever date later occurs.

(3) On the date of termination of such restrictions, all Native common stock of such corporation previously issued shall be deemed canceled and shares of stock of the appropriate class shall be issued to each stockholder, share for share, subject only to such restrictions as may be provided by the articles of incorporation, including any amendment thereto adopted pursuant ot section 7(h)(7), or in agreements between the corporation and individual stockholders.

(d)(1) Notwithstanding any provision of Alaska law, except those relating to stockholders' rights of petition and to proxy statements and solicitations which are not inconsistent with the provisions of this section—

(A) any amendment to the articles of incorporation of a corporation authorized by this section or subsections 7(g) and 7(h) (4), (5) and (7) of this Act;

(B) a transfer of assets made pursuant to section 7b;

(C) a resolution described in subsection (c) of this section; or

(D) a resolution described in subsection (f)(2) of this section;

shall be approved as provided in this subsection.

(2) The board of directors shall adopt a resolution setting forth the proposal and directing that it be submitted to a vote at the annual, or a special, meeting of the stockholders. One or more such amendments or resolutions may be submitted to the stockholders and voted upon at one meeting.

(3) A written or printed notice setting forth the proposal or a summary of the changes to be effected shall be given to each stockholder of record entitled to vote not less than fifty nor more than sixty days before the date of the meeting, either personally or by mail.

(e)(1) In order for a resolution to be approved under this section, the proposal must be voted upon by at least 51 per cent of the outstanding shares of Native common stock entitled to be voted and must receive the affirmative vote of at least 50 per cent plus one of the shares voted.

(2) Notwithstanding paragraph (1) of this subsection, the stockholders may require a minimum vote of more than 51 per cent of the outstanding shares of Native common stock entitled to be voted and must receive the affirmative vote of at least 50 per cent plus one of the shares voted.

(f)(1) If the result of a stockholder vote under this subsection is the extension of restrictions against alienation or a transfer of assets pursuant to section 7b, a stockholder who voted against the extension or transfer may demand and receive from the corporation the fair market value of his or her shares. Unless longer periods of time are authorized in the bylaws of the corporation, the procedure established by Alaska law for the exercise of the right of a dissent-

ing stockholder to demand and receive payment for his or her shares in certain cases shall be followed to the extent such right is made available pursuant to this subsection.

(2) The stockholders of the corporation may adopt a resolution, concurrent with the vote authorized under subsection (a) of this section, which provides that, in the event dissenters' rights are exercised,—

(A) the Native common stock shall be valued as restricted stock, having the same restrictions for the same period made applicable to stock by the vote; and/or

(B) the value of the land or any interest therein received by the corporation pursuant to this Act which—

(i) is committed by the corporation to Native traditional or cultural uses; and/or

(ii) is of speculative or unknown value on the date such resolution is adopted;

shall be excluded by the stockholder, the corporation and any court in the determination of the fair market value of the shares of Native common stock to be purchased from such stockholder by the corporation; and/or

(C) payment to each dissenting stockholders shall be made by the corporation through the issuance to such stockholder of a non-negotiable note in the principal amount of the payment due, which note shall be secured either by—

(i) a payment bond issued by an insurance company or financial institution;

(ii) the deposit in escrow of securities or property having a fair market value equal to at least 125 per cent of the face amount of the note; or

(iii) a lien upon the real property interests of the corporation valued at 125 per cent or more of the face amount of the note, other than lands or interests therein which are committed to Native traditional or cultural uses and the percentage interest in its timber resources and subsurface estate that would result in the recognition of "Gross Section 7(i) Revenues" within the meaning of, and pursuant to, Article II, Section 1(d) of the 7(i) agreement cited in subsecton (f)(2) of section 7b of this Act.

(3) Any note issued pursuant to this subsection shall provide that—

(A) interest shall be paid semi-annually, beginning as of the date the corporation elected to extend stock restrictions on Native common stock or transfer assets pursuant to secton 7b of this Act, at the rate applicable on such date to obligations of the United States having a maturity of one year; and

(B) the principal amount and any undistributed interest shall be payable to the former stockholder or his or her heirs or devisees—

(i) at any time, at the option of the corporation; or

(ii) if not so called, on December 18, 1991, or if the restrictions on Native common stock otherwise would have expired on a later date, on such date or five years after the date of election, whichever occurs first, or, if the transfer of

assets occurs after December 18, 1991, then five years after the date of such transfer.

SEC. 7b. (a) Any Native Corporation or the stockholders of a Native Corporation which has been dissolved involuntarily under applicable law are hereby authorized to convey any or all of its assets, including the title to the surface or subsurface of land to a qualified transferee entity as provided in this section. In cases where a Native Corporation has been involuntarily dissolved under State law, a State court of appropriate jurisdiction, UPM petition of no less than 25 of the former stockholders of such corporation, may order the transfer of real property assets and such other assets remaining after satisfaction of outstanding debts upon an affirmative vote of individuals who were shareholders in the dissolved corporation on a resolution as provided in Section 7(h)(6) or 7(c) without requiring that the resolution be adopted by the Board of Directors.

(b) The conveyance of such assets shall be as provided in a resolution, including a provision for the payment of consideration or no consideration as desired, adopted by the board of directors of such corporation and submitted to a vote of its stockholders as provided in section 7(h)(6) or section 7a of this Act, as the case may be.

(c) An entity shall be qualified to accept a transfer of assets conveyed pursuant to this section if it—

(1) is organized pursuant to, or recognized by, State or Federal law;

(2) has a membership composed of persons whose interest in the entity is non-transferable;

(3) provides membership for every person who holds Native common stock in the corporation making the transfer of assets on the day before the date of such transfer; and

(4) except as provided in paragraph (3), accepts as new members only Natives or descendants of Natives.

(d) Notwithstanding any provision of State or Federal law, a qualified transferee entity is authorized to—

(1) by a vote of its members,

(A) limit its membership to Natives or descendants of Natives; and

(B) admit to membership non-Natives only for the purpose of complying with paragraph (3) of subsection (c) of this section;

(2) distribute cash and other assets to its members, except that such entity shall not convey fee title to land or interests therein unless authorized or required by section 14(c) or 21(j) of this Act; and

(3) exchange lands or interests therein pursuant to the provisions of section 22(f) of this Act and section 1302(h) of the Alaska National Interest Lands Conservation Act.

(e) The provisions of subsections (d) and (e) of section 21 of this Act shall continue to apply to any lands or interests therein conveyed by a Native Corporation to a qualified transferee entity pursuant to this section.

(f)(1) Any revenues subject to distribution under section 7(i) of this Act derived from assets conveyed pursuant to this section shall remain subject to section 7(i) to the same extent such revenues would have been subject if the conveyance had not occurred.

(2) A Regional Corporation shall not convey assets subject to section 7(i) to more than one qualified transferee entity. Prior to receiving a conveyance of an asset subject to section 7(i), a qualified transferee entity shall agree in writing—

(A) to be bound by the provisions of the agreements dated June 29, 1982, among and between the parties of Aleut Corporations et al. v. Arctic Slope Regional Corporation (Civ. Act. A75-53 D. Ak.); and

(B) to waive its sovereign immunity, if any, with respect to claims arising under section 7(i) or this subsection.

(3) The Regional Corporation or, in the case of its dissolution, another single entity designated by its stockholders, or the United States district court, as appropriate, shall be responsible for administering the provisions of section 7(i) and the June 29, 1982, agreement with respect to assets subject to section 7(i) conveyed by such corporation pursuant to this section.

(4) After the conveyance of an asset subject to section 7(i) by a Regional Corporation, such asset shall be security for the payment by such corporation or its successor entity of all revenues which the corporation is obligated to distribute to other Regional Corporations pursuant to section 7(i).

(g)(1) If the resolution conveying assets is approved by a stockholder vote pursuant to subsection (b) of this section, any stockholder who voted against the resolution may demand and receive payment from the corporation for all of his or her shares, but only if, concurrent with such vote, the stockholders of the Native Corporation adopt a resolution expressly providing for such right.

(2) The procedure established by Alaska law for the exercise of the right of a dissenting stockholder to demand and receive payment for his or her shares in certain cases shall be followed if such right is made available pursuant to this subsection.

(3) For the purpose of this section, a resolution establishing dissenters' rights may provide that the Native common stock shall be valued on the basis set forth in section 7a(f)(2) and that the form of payment to dissenting stockholders shall be as provided in section 7a(f)(3).

SEC. 7c. No provision of the Alaska Native Claims Settlement Act Amendments of 1986 shall be construed as enlarging or diminishing or in any way affecting the scope of governmental powers, if any, of an Alaska Native village entity, including entities organized under the Act of June 18, 1934 (48 Stat. 987), as amended, or Traditional Councils.

SEC. 7d. The Aleut Corporation, Cook Inlet Region, Inc., and Koniag, Inc., and any Village Corporation within the Aleut and Cook Inlet regions may, by a vote of its board of directors within one year after the effective date of this section, elect to comply with the provisions of section 7a with respect to a stockholder vote on the question of whether to continue restrictions on alienation of Native common stock imposed by paragraph (1) of section 7(h) beyond December 18, 1991.

SEC. 8. (a) * * *

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[(c) The provisions concerning stock alienation, annual audit, and transfer of stock ownership on death or by court decree as provided for regional corporations in section 7, including the provisions of section 7(h)(3), shall apply to Village Corporations Urban Corporations and Native Groups; except that audits need not be transmitted to the Committee on Interior and Insular Affairs of the House of Representatives or to the Committee on Energy and Natural Resources of the Senate.]

(c)(1) The provisions of subsections (g), (h), and (o) of section 7 and of section 7a of this Act relating to Regional Corporations shall apply in all respects to Village Corporations, Urban Corporations and Native groups, except that—

(A) audits need not be transmitted to the Committee on Interior and Insular Affairs of the House of Representatives or to the Committee on Energy and Natural Resources of the Senate; and

(B) subject to the provisions of paragraph (2) of this subsection and section 7a, restrictions on the alienation of Native common stock of such corporations, inchoate rights thereto, and any dividends paid or distributions made with respect thereto shall continue after December 18, 1991.

(2) The restrictions on alienation of Native common stock of Village Corporations, Urban Corporations and incorporated Native groups may be terminated or extend by the adoption of an amendment to their articles of incorporation to such effect pursuant to the provisions of paragraphs (2) and (6) subsection 7(h) or of section 7a, as the case may be, except that—

(A) with respect to action under section 7(h), only one such vote may be held prior to December 18, 1991, and only once annually thereafter; and

(B) with respect to action under section 7a, votes shall be held as provided in section (b)(1) of section 7a.

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SEC. 10. (a) * * *

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(c)(1) The United States District Court for the District of Alaska is vested with exclusive original jurisdiction over any action challenging the constitutionality of the Alaska Native Claims Settlement Act Amendments, of 1986. Such actions shall be heard and determined by a court of three judges as provided in section 2284 of title 28, United States Code, with a direct appeal from any final judgment to the United States Supreme Court.

(2) It being the express intention and direction of Congress that in no circumstances shall enactment of this Act result in any liability to the United States, the court shall not enter a money judgment against the United States in fashioning appropriate relief upon a determination that any of such sections violates the Fifth Amendment to the United States Constitution.

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SEC. 14. (a) * * *

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(i)(1) A Regional Corporation may convey any subsurface estate owned by such corporation to a village entity which acquired or currently owns the surface estate pursuant to this Act.

(2) Notwithstanding any conveyance pursuant to paragraph (1) of this subsection, the Regional Corporation shall continue to receive the thirty per cent of the revenues from any development of the subsurface estate it would have retained had here been no such conveyance and the remaining seventy per cent of such revenues shall be distributed in accordance with section 7(i).

(3) Any conveyance under this subsection shall be subject to the provisions of subsection 7b as if the village entity were a qualified transferee entity. The document or documents effecting such conveyance shall be recorded by the Regional Corporation, together with copies of subsection 7b and this subsection, in the land records of the appropriate recording district.

(4) The village entity to which any subsurface estate is conveyed pursuant to this subsection may not convey or otherwise transfer all or any part of such subsurface estate to any other entity without the express consent of the transferor Regional Corporation.

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SEC. 21. (a) * * *

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(d) [(1) Real property interests conveyed, pursuant to this Act, to a Native individual, Native Group, Village or Regional Corporation or corporation established pursuant to section 14(h)(3) which are not developed or leased to third parties or which are used solely for the purposes of exploration shall be exempt from State and local real property taxes for a period of twenty years from the vesting of title, pursuant to the Alaska National Interest Lands Conservation Act or the date of issuance of an interim conveyance or patent, whichever is earlier, for those interests to such individual, group or corporation: *Provided,* That municipal taxes, local real property taxes, or local assessments may be imposed upon any portion of such interests within the jurisdiction of any governmental unit under the laws of the State which is leased or developed for purposes other than exploration for so long as such portion is leased or being developed: *Provided further,* That easements, rights-of-way, leaseholds, and similar interests in such real property may be taxed in accordance with State or local law. All rents, royalties, profits, and other revenue or proceeds derived from such revenues or proceeds are taxable to the same extent as such revenues or proceeds are taxable when received by a non-Native individual or corporation.]

(1)(A) All land and interests therein conveyed pursuant to this Act, to any Native individual, Native group, Village or Regional Corporation, or a corporation established pursuant to section 14(h)(3) of this Act shall be, so long as such land and interests therein are not developed or leased to third parties or are used solely for purposes of exploration, entitled from the date of their conveyance to immunity from—

(i) adverse possession and similar claims based upon legal theories of estoppel;

(ii) real property taxes by any governmental entity;

(iii) judgment resulting from any claim based upon or arising under title 11 of the United States Code relating to bankruptcy (or any successor statute), other insolvency or moratorium laws, or other laws affecting creditor's rights generally;

(iv) unless such immunity is waived by the corporation in a valid and binding contract executed prior to the commencement of such proceedings, judged in any action at law or equity to recover sums owed or penalties incurred by any Native Corporation or Native group or any officer, director, or stockholder of any such corporation or group, and

(v) involuntary distribution or conveyance related to the involuntary dissolution of the Native Corporation.

(B) For the purposes of this paragraph, land shall not be considered to be developed solely as a result of construction, installation, or placement upon such land of any structure, fixture device or other improvement intended to enable, assist, or otherwise further the subsistence or other customary or traditional users of such land.

(C) Immunities provided for in this paragraph shall be in addition to those imminities or other benefits to which such lands or interests therein may be entitled under the Alaska National Interest Lands Conservation Act, but shall not apply to any judgment in any action at law or equity or to any arbitration award arising out of any claim regarding revenue sharing under section 7(i) of this Act.

(D) Land to which this paragraph applies and lands conveyed pursuant to section 7b of this Act shall be subject to condemnation for public purposes in accordance with the provisions of applicable State law.

(E) Except as provided in section 14(c)(3), no trustee, receiver or custodian vested under applicable Federal or State law with any right, title or interest of any Native Corporation or Native group may assign or lease to a third party and land subject to this paragraph which has not theretofore been developed or leaseds, or commence development or use of the land other than for purposes of exploration, and such trustee, receiver or custodian may not convey any right, title or interest in land and interests therein protected under this paragraph to any third party, except pursuant to a judgment or arbitral award regarding revenue sharing under section 7(i).

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(f) **[Until January 1, 1992]** *Until such time as the limitations upon alienation of Native common stock have been removed pursuant to section 7(h)(2) or have expired pursuant to section 7a of this Act,* stock of any Regional Corporation organized pursuant to section 7, including the right to receive distributions under subsection 7(j), and stock of any Village Corporation organized pursuant to section 8 shall not be includable in the gross estate of a decedent under sections 2031 and 2033, or any successor provisions, of the Internal Revenue Code.

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[SEC. 27. If any provision of this Act or the applicability thereof is held invalid the remainder of this Act shall not be affected thereby.]

SEC. 27. The provisions of this Act, as amended, are severable and, if any provision of the Act is determined by a court of competent jurisdiction to be invalid, such invalidity shall not affect any other provision.

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[SEC. 28. Any corporation organized pursuant to this Act shall be exempt from the provisions of the Investment Company Act of 1940 (54 Stat. 789), the Securities Act of 1933 (48 Stat. 74), and the Securities Exchange Act of 1934 (48 Stat. 881), as amended, through December 31, 1991. Nothing in this section, however, shall be construed to mean that any such corporation shall or shall not, after such date, be subject to the provisions of such Acts. Any such corporation which, but for this section, would be subject to the provisions of the Securities Exchange Act of 1934 shall transmit to its stockholders each year a report containing substantially all the information required to be included in an annual report to stockholders by a corporation which is subject to the provisions of such Act.]

SEC. 28. (a)(1) Any corporation organized pursuant to this Act shall be exempt from the provisions of the Investment Company Act of 1940 (54 Stat. 789), the Securities Act of 1933 (48 Stat. 74), and the Securities Exchange Act of 1934 (48 Stat. 881), as amended, through the earlier of the date after—

(A) the date on which the corporation issues any shares of stock which will not be issued solely to Natives or descendants of Natives or to entities established for the sole benefit of Natives or descendants of Natives; or

(B) the date on which the corporation removes the limitations on alienation of Native common stock as provided for in section 7(h)(2) or the date on which such restrictions terminate under section 7a of this Act.

(2) Nothing in this section shall be construed to mean that any such corporation shall or shall not, after such date, be subject to the provisions of such Acts.

(b)(1) Any such corporation which, but for this section, would be subject to the provisions of the Securities Exchange Act of 1934 shall transmit to its stockholders each year a report containing substantially all the information required to be included in an annual report to stockholders by a corporation which is subject to the provisions of such Act.

(2) For the purposes of determining the applicability of the registration requirements of the Securities Exchange Act of 1934 after the date determined pursuant to subsection (a) of this section, holders of Native common stock shall be excluded from the calculation of the number of shareholders of record pursuant to section 12(g) of that Act.

(c) The provisions of the Investment Company Act of 1940 shall not, in any event, apply to any corporation organized pursuant to this Act prior to January 1, 2001.

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SEC. 29. (a) * * *

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(c) In determining the eligibility of any household or individual Native or descendant of a Native to participate in the Food Stamp program, receive assistance under the Social Security Act or financial assistance or benefits available under any other Federal or Federally assisted program otherwise available to the Native people of Alaska as citizens of the United States and of the State of Alaska, any compensation, renumeration, revenue, stock, land, or other benefits received by any individual, any household or any member of such household under this Act, including land received from such individual's Native Corporation or Native group organized under this Act, shall be disregarded and shall not be considered as a resource or otherwise utilized as a basis for making such determination.

(d) Until such time as less than fifty per cent of the voting power of a Native Corporation is represented by shares of outstanding Native common stock or any other securities of such corporation held by Natives or descendants of Natives entitled to vote, such Native Corporation for all purposes of Federal law shall be considered a corporation owned and controlled by Alaska Natives.

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SEC. 30. (a) * * *

(b) Such mergers or consolidations shall be on such terms and conditions as are approved by vote of the shareholders of the corporations participating therein, including, where appropriate, terms providing for issuance of additional shares of Regional Corporation stock to persons already owning such stock, and may take place pursuant to votes of shareholders held either before or after the enactment of this section: *Provided,* That the rights accorded under Alaska law to dissenting shareholders in a merger or consolidation may not be exercised in any merger or consolidation pursuant to this Act effected [prior to December 19, 1991] *while the Native common stock of all corporations subject to merger or consolidation remain subject to restraints on alienation.* * * *

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ADDITIONAL VIEWS

Fifteen years have passed since the Alaska Native Claims Settlement Act of 1971 was signed into law by President Nixon. By any consideration, ANCSA was a bold, far-reaching land claims settlement act and represented a novel, positive change in traditional Federal Indian law.

The years since 1971 have marked significant progress in implementing the settlement act. Yet, it is clear at this time, implementation is not complete. This year, the Committee has been presented with changes to ANCSA which will allow for greater flexibility for planning the future of Native Alaskans. In this regard, it should be noted that the Committee which chose to accept these changes retains only 3 members from that which acted in 1971.

There has been a high degree of success of several of the Regional Corporations which have contributed greatly to the economy of Alaska, by providing jobs for Alaskans and helping to broaden the economic base in the State of Alaska. Regional Corporations alone provide 8,000 jobs in Alaska and have contributed tens of millions of dollars to the State economy. They are an important source of employment and stability in a growing state. On the village level, there have also been some remarkable successes.

However, in some areas, the Corporation form has not worked as well. The Committee, particularly Chairman Udall, is concerned over the Corporate form chosen to implement ANCSA. Particularly in some villages, the corporate form may not have been the best form to convey lands under ANCSA. However, we cannot rewrite history. We can deal only with the situation presented to the Congress in 1986—a situation of delayed implementation, spurred by excessive litigation and the prolonged struggle over the "national interest" environmental legislation.

It is simply too early in the evolution of Native Corporations formed because of ANCSA to determine if the experiment, being such a departure from reservations, has worked. The balance of evidence is on the side that the vast majority of these corporations can and will succeed. Ultimately, this Committee chose to accept the request of Alaska Native leaders and the expressed support of the majority of Native Alaskans to provide them with more options to alter the Corporate structures begun with ANCSA, without a return to reservation status found in other states.

Finally, the Committee report notes that the Committee adopted a change to Section 8 of the legislation, which places a new Section 7(c) in ANCSA. As I have stated throughout consideration of this bill, this legislation does not deal with governments. It deals solely with stock and land ownership. These are ownership issues of private individuals and private corporations—not governments. The amendment adopted by the Committee with regard to Section 7(c) clarifies this intent. Any reading of the amendment which I spon-

sored in the Committee which interprets the intent as affecting the original intent of ANCSA would be erroneous. Clearly and simply, ANCSA is not now before this Committee and this Congress. The 1986 amendments to that Act are all which are considered by the Congress now—it is only upon those amendments which we can act.

DON YOUNG.

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